

91-333

Supreme Court, U.S.
FILED
AUG 26 1991
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____ TERM, 1991

RONALD W. GREGORY and DOROTHY L. GREGORY,

Petitioners,

vs.

FRONTIER MATERIALS, INC.; U. S. TRUSTEE;
ST. VRAIN LEFT HAND WATER CONSERVANCY
DISTRICT; FRONTIER AIRLINES FEDERAL CREDIT
UNION; FIRST FEDERAL SAVINGS BANK OF
OKLAHOMA; GRANGE MUTUAL LIFE CO.; BOULDER
COUNTY, COLORADO; E.H.M.G. CONSULTANTS;
ROSS J. WABEKE, Interim Trustee of Estate,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronald W. Gregory
Dorothy L. Gregory

Pro Se Dated: April 25, 1991

c/o J. Bayne

P.O. Box 29773

Thornton, CO 80229-0773

QUESTIONS PRESENTED

1. Did the Bankruptcy Court, wherein additional debt of \$215,000 was authorized in a Settlement Agreement, the creation of a new lien, and the creation of a new creditor, violate the intent of, and the Law of, Title 11 of the United States Code, Section 362?

2. If the Bankruptcy Court did not violate 11 USC 362, then did the Court, not in accordance with Law, grant Petitioners adversary, Frontier Materials, Inc. favored status over other creditors, creating an illegal creditor and granting this illegal creditor 'insider' status?

3. Did personal prejudice and bias, as held by the trial judge, violate the "impartial and fair trial" proviso of the Fourteenth Amendment to the United States Constitution and the ethical judicial



requirement to recuse under 28 USCS 455, prior to entering rulings and destroying the ability to reorganize pursuant to the Congressional intent of Title 11 of the United States Code?

4. Did the United States Bankruptcy Court violate Due Process by depriving Petitioners "standing" to be heard and to act to protect their property and rights pursuant to the First, Fifth and Fourteenth Amendments to the United States Constitution?

5. Did the intentional denial by United States District Court, of appeal from conversion, and ruling in accordance with the written suggestion of the Bankruptcy Court, and in violation of the Rules, constitute a conspiratorial act between the United States District Court Judge and the United States Bankruptcy



Court within the meaning of 18 USCS 241 and 18 USC 245?

6. Did the Bankruptcy Court, on December 9, 1988, when ruling for purchase by Frontier Materials, Inc. fail to consider the true value of the reorganization property as clearly outline by Frontier Materials, Inc. Chief Executive Officer, and act in reversible error and abuse its discretion while influenced by personal prejudice and bias?

7. Did the United States District Court act pursuant to law by its reference to the Bankruptcy Court of a removed action from Colorado State Court wherein a jury trial was demanded pursuant to the Seventh Amendment to the United States Constitution, yet was thereby denied?

8. Did the United States Bankruptcy



Court violate Petitioners due process rights pursuant to the Fifth and Fourteenth Amendment to the United States Constitution by "threatening" Petitioners with sanctions, when acting in their defense, they filed papers to protect their property and rights?

9. Did the Bankruptcy Court and the Trustee violate the law by forcing insolvency upon Debtors, when, on January 21, 1986, the date of filing Bankruptcy Petition, they had less than \$900,000.00 in debt and more than \$3,000,000.00 in assets?

10. Is the Bankruptcy Court for the District of Colorado performing its prescribed function, as intended by law, or is it acting to defeat the purpose and intent of Title 11 of the Bankruptcy Code, specifically Chapter 11 and Chapter 12



Reorganization?

11. Should this Court order an investigation into Bankruptcy Case 86 B 0476 G and/or 86 B 0476 A, pursuant to 18 USC 3057 and the inherent powers vested in this Court?



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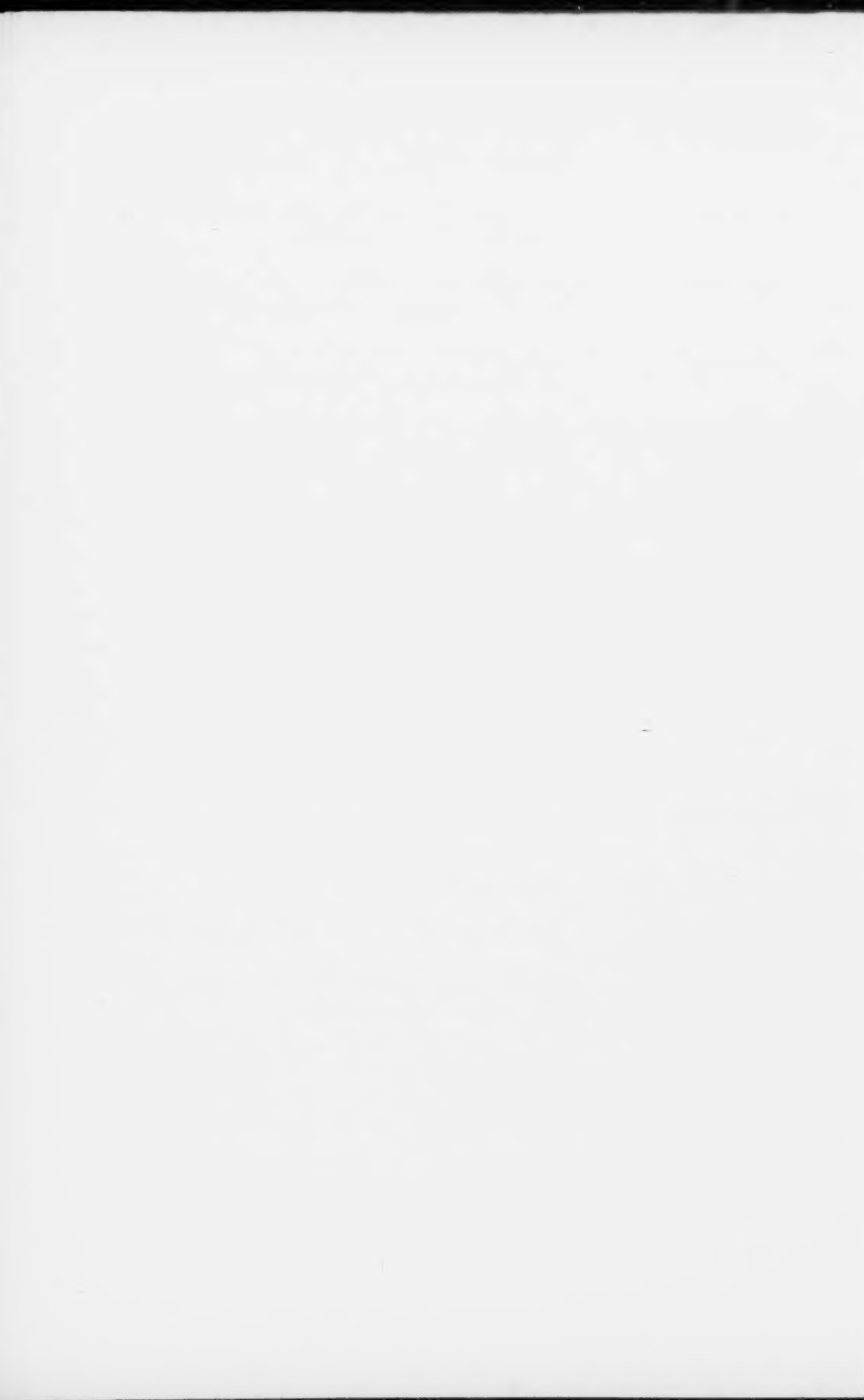


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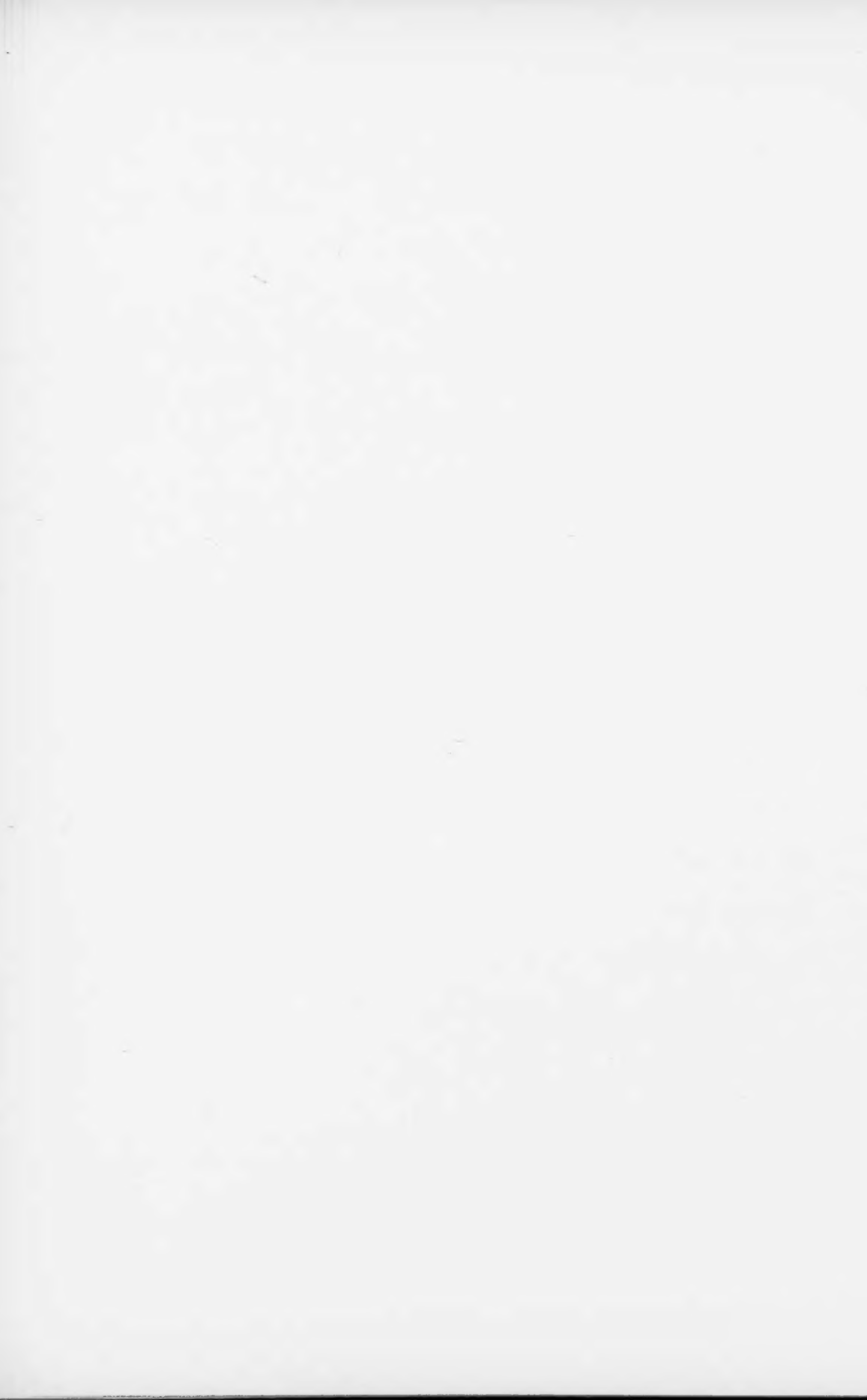
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ROSS J. WABEKE, Interim Trustee of the Estate,

Respondents.

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PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Petitioners, Ronald W. Gregory and Dorothy
L. Gregory, pro se, respectfully pray that a
writ of certiorari issue to review the judgment
and opinion of the United States Court of
Appeals for the Tenth Circuit AFFIRMING the
decision of the United States District Court for
the District of Colorado which AFFIRMED certain
orders of the United States Bankruptcy Court for
the District of Colorado, wherein petitioners



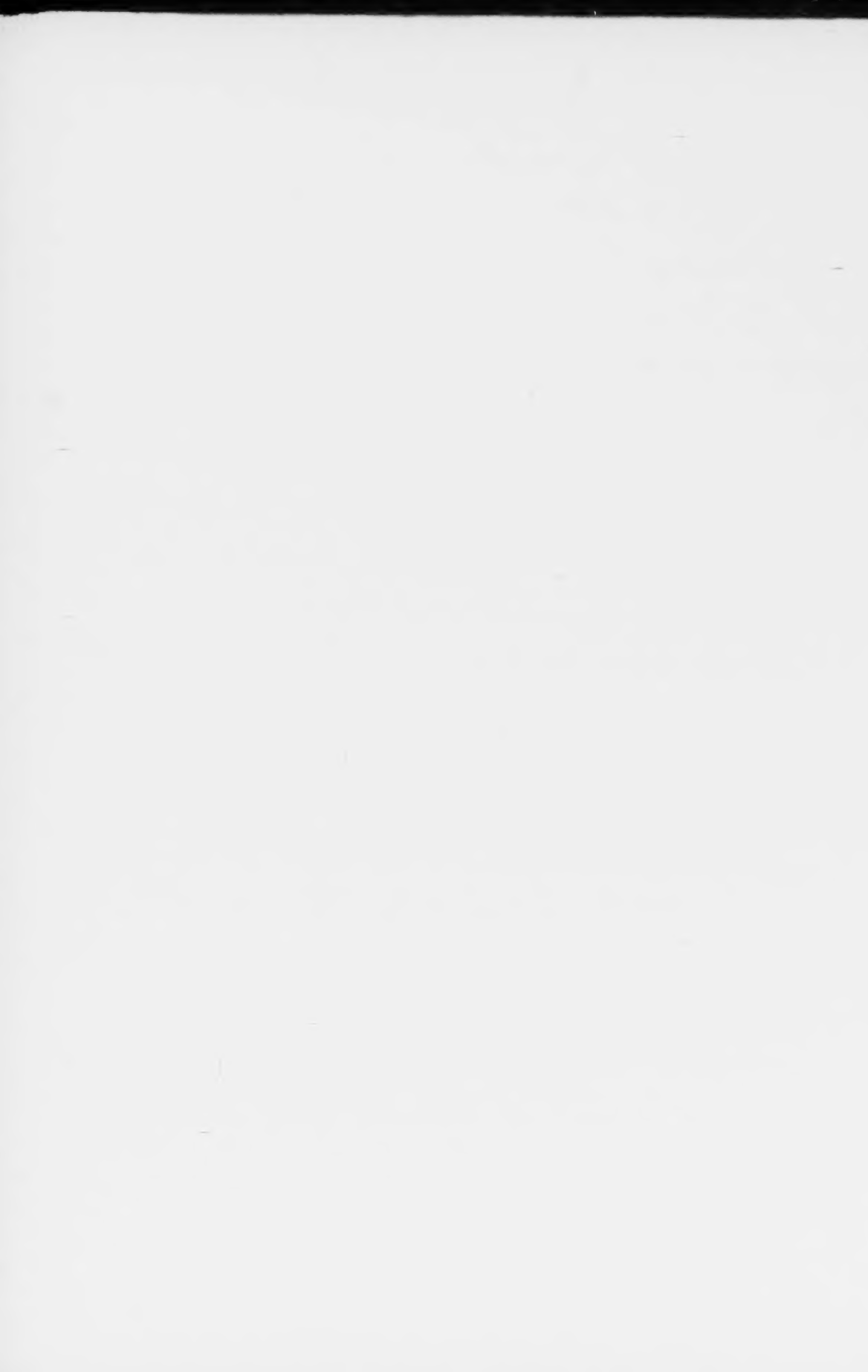
rights were materially and detrimentally affected by decisions not in accordance with law or fact, and further, where such rulings were in violation of petitioners' Constitutional rights and privileges.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit, an unpublished written opinion, appears in Appendix A to this Petition. The unpublished written opinion of the United States District Court for the District of Colorado appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on August 29, 1990. A timely Petition for Rehearing En Banc was filed on October 8, 1990. The Court of Appeals' denial of the Petition for Rehearing En Banc, which the Court regarded as a Petition for Rehearing, was issued on November 27, 1990 and is set forth in



Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1). Time parameters for which to file Writ of Certiorari were extended to April 26, 1991.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Title 11 of the United States Code is set forth in Appendix D.

2. Title 15 of the United States Code is set forth in Appendix E.

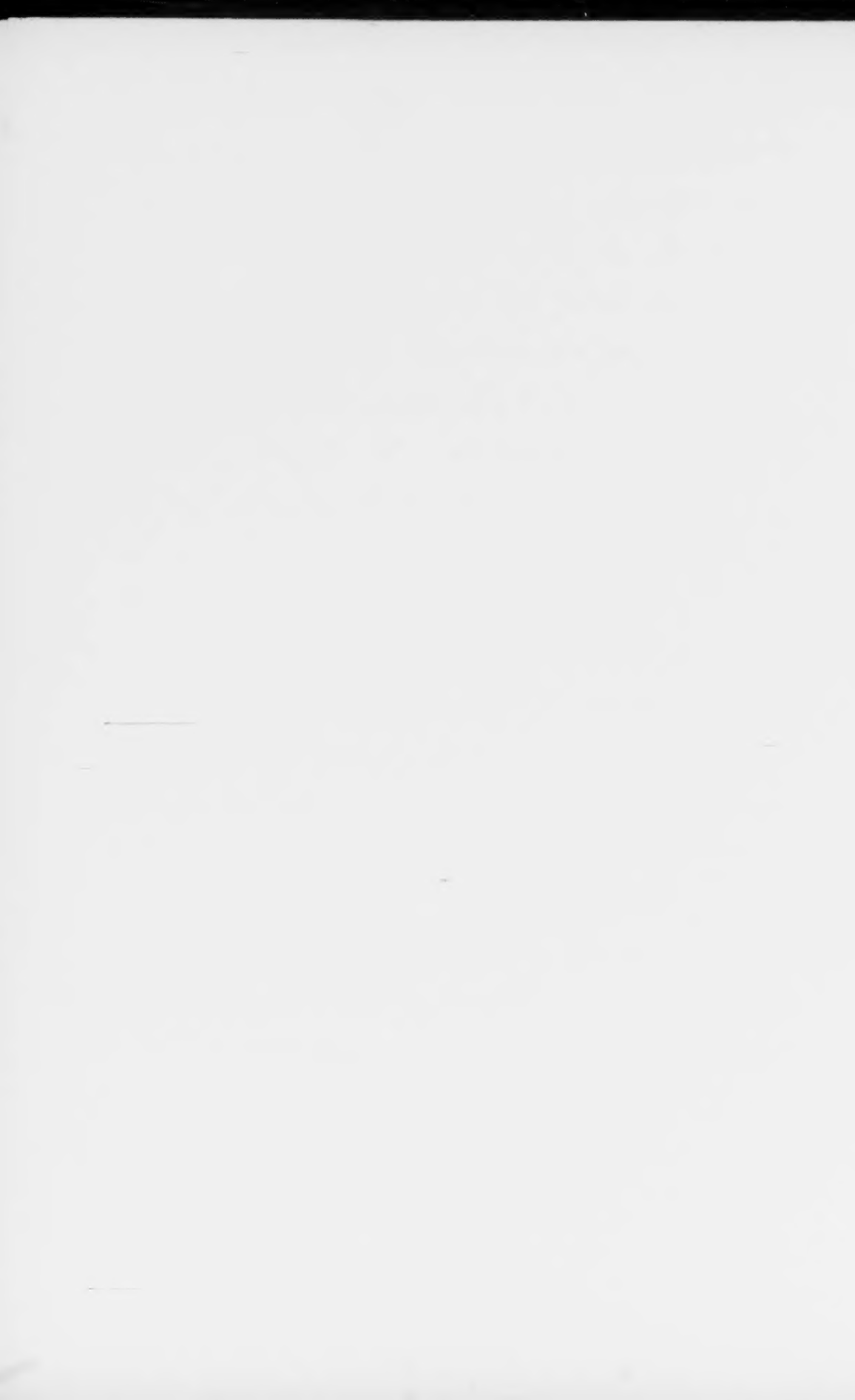
3. Title 18 of the United States Code is set forth in Appendix F.

4. Amendment One to the United States Constitution is set forth in Appendix G.

5. Amendment Four to the United States Constitution is set forth in Appendix H.

6. Amendment Five to the United States Constitution is set forth in Appendix I.

7. Amendment Seven to the United States Constitution is set forth in Appendix J.



8. Amendment Eight to the United States Constitution is set forth in Appendix K.

9. Amendment Fourteen to the United States Constitution is set forth in Appendix L.

10. Settlement Agreement is set forth in Appendix M.

11. Bankruptcy Court Order approving Settlement Agreement is set forth in Appendix N.

12. Summary of Acts by Frontier Materials, Inc. are set forth in Appendix O.

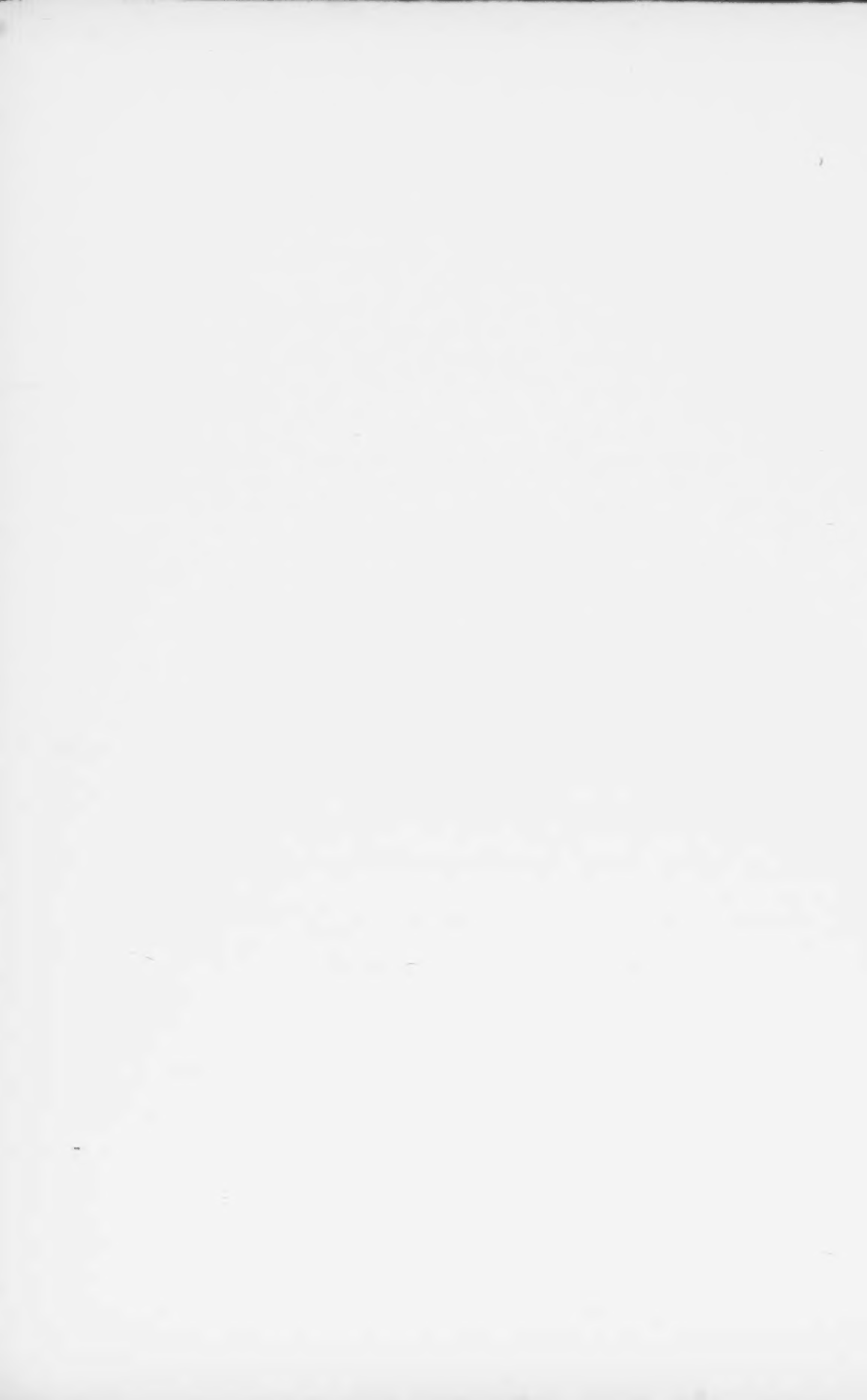
13. Bankruptcy Rules 2018(a) and 5004(a) ■ set forth in Appendix P.

14. Federal Rules of Evidence 103; 602; 803 are set forth in Appendix Q.

15. Note from Bankruptcy Court to District Court is set forth in Appendix R.

STATEMENT OF THE CASE

The United States Bankruptcy Court for the District of Colorado had jurisdiction pursuant to Title 11 of the United States Code. The



United States District Court for the District of Colorado had appellate jurisdiction pursuant to original jurisdiction of Title 11 of the United States Code.

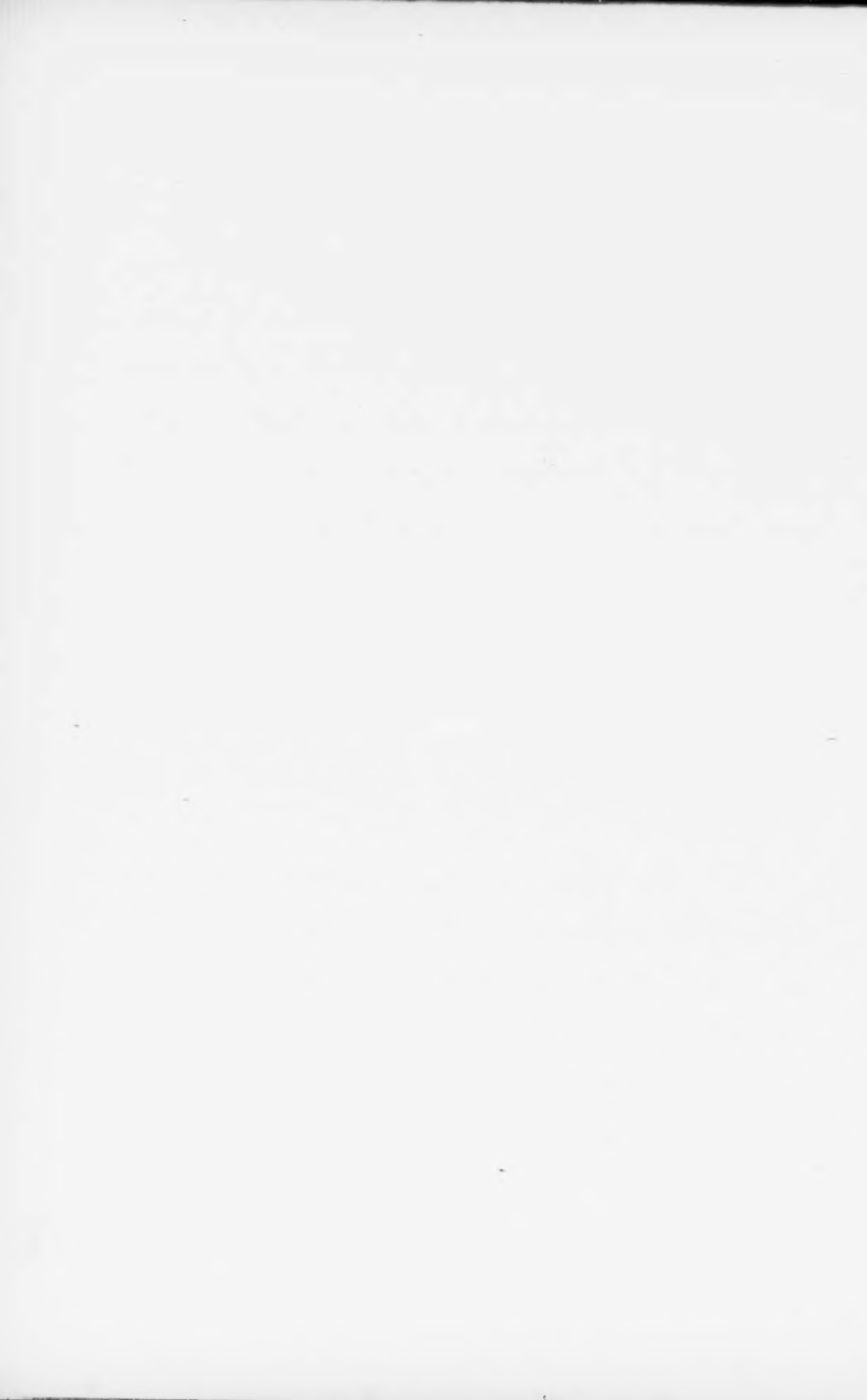
Properties held by Petitioners on January 21, 1986.

Petitioners held title to four (4) distinct real properties on January 21, 1986.

1. 115 Acres in Boulder County, Colorado containing 4,000,000 + tons of high quality sand and gravel aggregates ideally suited for the production of concrete and asphalt products with two (2) residences situated thereon. The value of the royalty contract was approximately \$1,600,000, residential improvements were appraised at approximately \$255,000, augmentation water value of \$120,000 for a total minimal value approximating \$1,970,000. In addition, the damage value of the hereinafter mentioned "water right destruction" by Western

Paving in 1985 was minimally valued from \$50,000 to an expected appraised value of \$365,000. Based upon the value of the Frontier Materials, Inc. (hereinafter "Frontier") mining lease of July 1, 1983, together with a guarantee by Frontier to forward 1/3 of the royalty payments to Grange Mutual Life Company (hereinafter "Grange"), a \$500,000 loan from Grange was obtained on the property in July 1983. The loan was used to consolidate other loans, among which provided for the later-described commercial property in Wyoming to be unencumbered. On January 21, 1986, the loan was in default.

2. 503 Acres in Craig County, Oklahoma containing approximately 180 acres of farmland and 323 acres in grazing land, with one residential improvement plus other out-buildings. The property had been surveyed for residential-acreage homesites which had been



registered and approved by the county regulatory authorities. The appraised value as a ranching property was Three Hundred Fifty Thousand (\$350,000) Dollars. There was no appraisal as to filed homesite development value, 'mineral rights for limestone quarry' or 'oil and gas production' value. On January 21, 1986, the property was encumbered in the amount of \$198,000. Said loan was not in default.

3. A retail business in Centennial, Wyoming

- a. general store selling groceries, ice cream, gasoline, sporting goods, hardware;
- b. Restaurant specializing in family dining, with lounge dispensing cocktails, and package liquor sales;
- c. Two (2) rental cabins;
- d. Four (4) vacant lots equipped with 'hook-ups' for four (4) mobile homes.

The property, originally purchased for \$100,000 as a general store and tire repair facility, was



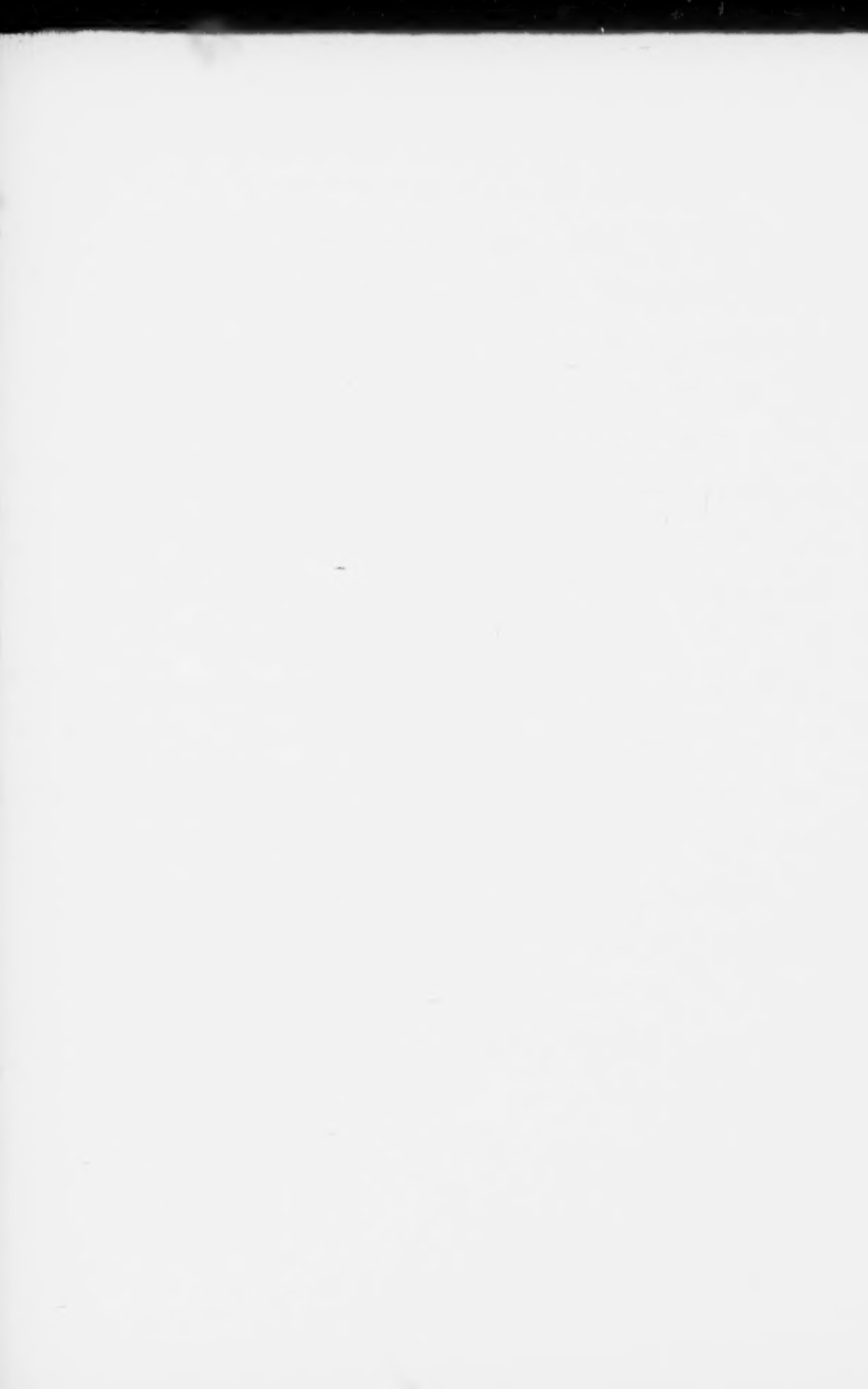
remodeled into a lounge and restaurant with large natural rock fireplace, the addition of another building to enlarge the general store, the addition of automated gasoline delivery pumps, and a "western facade with boardwalk". The appraised value (most recent) of the property in 1981 was Four Hundred Fifty Thousand (\$450,000) Dollars. On January 21, 1986, the property was free and clear of liens after all loans against said property were retired from the above mentioned \$500,000 loan proceeds.

4. 39 Acres in Albany County, Wyoming, together with Petitioners home (built in 1978), variously appraised by creditor Frontier Airlines Federal Credit Union appraiser in 1987 at Eighty-eight Thousand (\$88,000) Dollars and by Petitioners appraisers in 1981 for the FALCU loan at \$171,000 and, after the installation of a wind generator and adding a building addition, Petitioners' appraiser valued it at Two Hundred

Thirty-four Thousand (\$234,000) Dollars in 1987. On January 21, 1986, the property was encumbered by two mortgages with a total balance owing of approximately \$52,000 not in default.

On January 21, 1986, the Petitioners were financially encumbered to an approximate total of Seven Hundred Fifty Thousand (\$750,000) Dollars on assets totalling minimally from approximately \$2,735,000, or 27% encumbrance on the total values, to \$5,143,000, or 14.5% encumbrance on the enhanced values. Values not included herein are personal assets.

NOTE: The following estate real property value determinations and calculations are derived from the testimony presented by Frontier Materials, Inc. to the Bankruptcy Court on December 2, 1988. It is important to add here that the foregoing asset values are conservative, and the value of the Boulder County, Colorado mining property was clearly established on December 2,



1988, by testimony under oath by Henry Braly, CEO of Frontier Materials, Inc., before Judge Charles E. Matheson. He stated that the mining "royalty" determines the value of property.

During Frontier's application to acquire Petitioners' property Mr. Braly stated "Royalty times tons available equals the value of property" [Transcript December 2, 1988, p.25 1.6,7] [Appellants' Opening Brief (89-F-148) p.15]. Said tonnage" available varied from Frontier's appraisers, (who admittedly didn't examine the property) of 2,400,000 tons to calculations of other geologists who examined the property in depth and who determined the available tonnage as being in excess of 4,000,000 tons. Mr. Braly's 'then' most recent contract for royalty tonnage disclosed, and was testified to, that Frontier was paying One (\$1.00) Dollar per ton royalty for aggregate of inferior quality to the Petitioners' aggregate

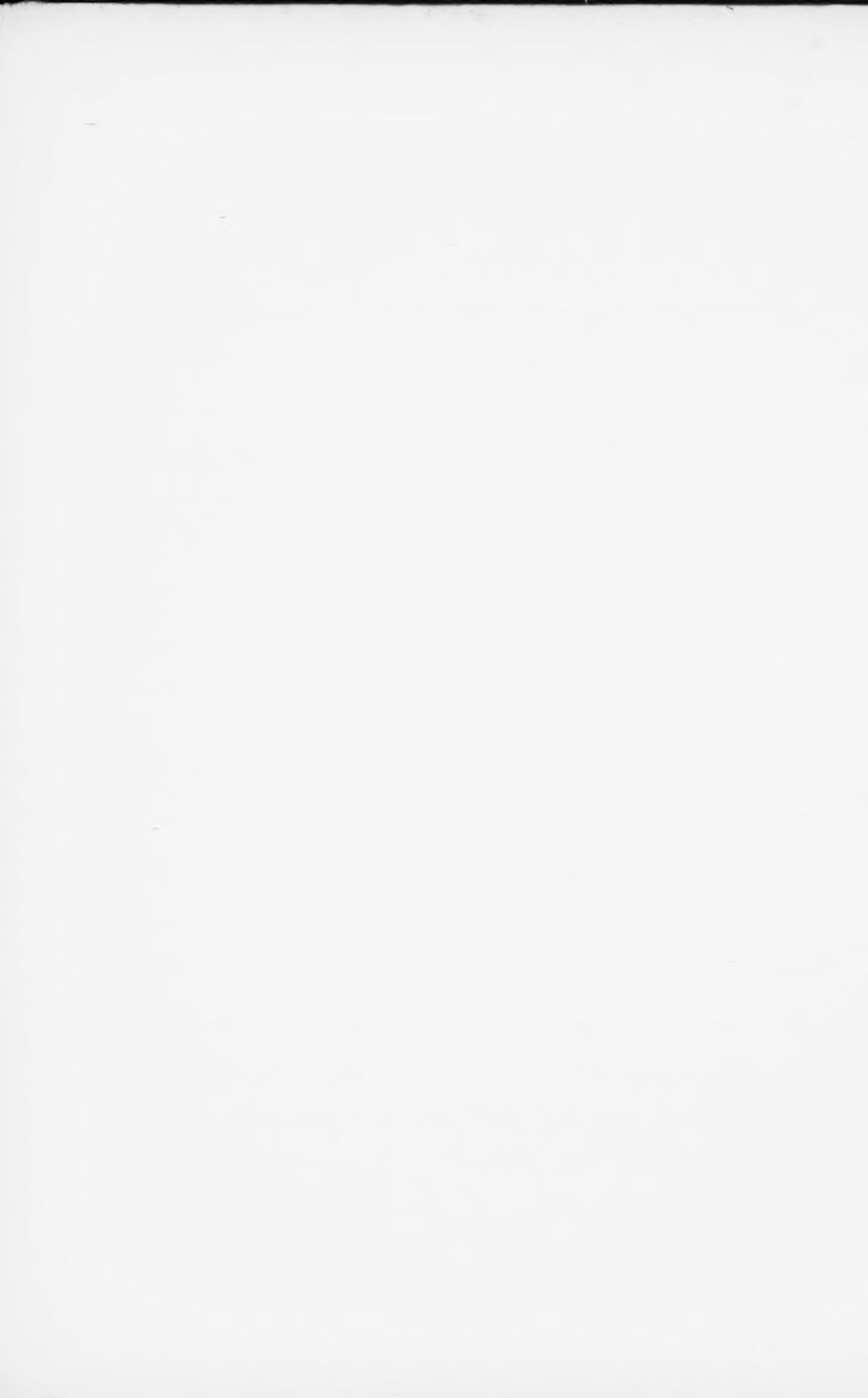


deposit. Mr. Braly's accurate valuation formula effectively established a value of \$2,400,000 minimum, to \$4,000,000 plus - on the Petitioners' mineral aggregate deposit - not including improvements and water rights. Therefore, the Petitioners 'real' assets were valued minimally at \$3,543,000 - with a 21% encumbrance on the total minimal values, or (using 4,000,000 tons) at \$5,143,000 = 14.5% encumbrance on the expanded values.

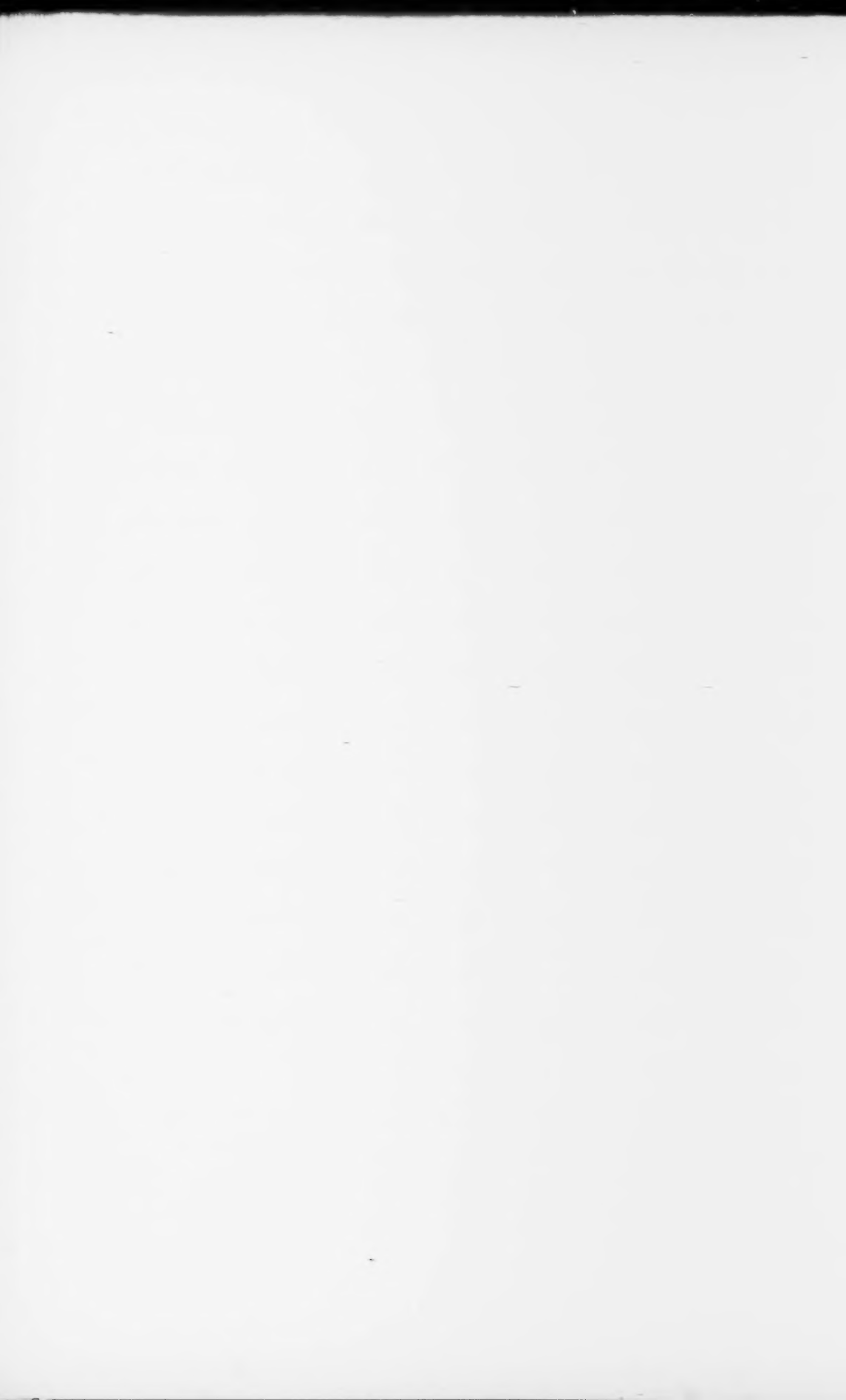
Additional History.

Western Paving Construction Company.

In August 1980, Petitioner Ronald W. Gregory (hereinafter "lessor") entered into a mining lease with Western Paving Construction Company (hereinafter "Western") to mine sand and gravel, exclusive of all other properties, from the Gregory property in Boulder County, Colorado. Western paid an advance royalty of Sixty Thousand (\$60,000) which 'advance' Lessor

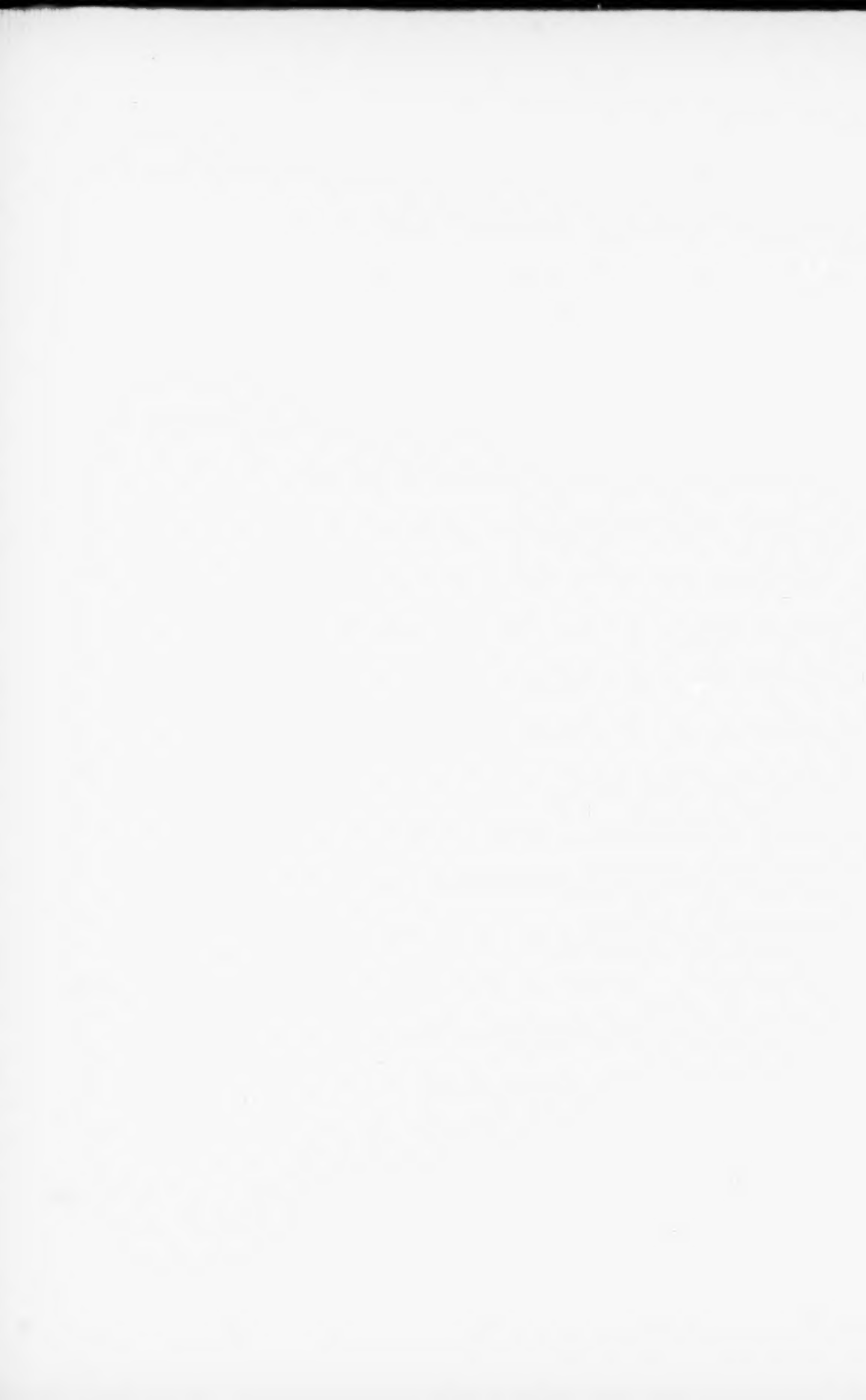


secured by a First Deed of Trust on said mining property. The mining royalty agreement provided for; 1) an additional advance payment of Ninety Thousand (\$90,000) Dollars after the permit was issued; and 2) was to net the Lessor over a period of five years approximately One Million (\$1,000,000) Dollars, before taxes. After significant delay, and unexpectedly during finalizing performance provisos of the mining royalty agreement, it was required by St. Vrain Left Hand Water Conservative District, that Lessor acquire sufficient agricultural irrigating water to augment evaporative loss of ground water due to open pits created by the mining process. Lessor acquired said augmentation water for approximately One Hundred Twenty Thousand (\$120,000) Dollars through funds partially borrowed from Longmont National Bank of Longmont, Colorado.



[NOTE: Said loan from Longmont National Bank was paid in full in October 1985, and further, accounts with all other secured creditors were current to January 1, 1986 - except Grange.]

Although Lessor fully performed pursuant to the lease agreement, Western failed and refused to perform pursuant to said agreement. Said refusal deprived Lessor of funds to repay the bank loan received for the augmentation water. Additionally in 1985, Western's mining operations on adjacent property destroyed Lessor's, 9.11 Cubic Feet Per Second, water right, adjudicated in 1908, variously valued from Fifty Thousand (\$50,000) Dollars and Three Hundred Sixty-five Thousand (\$365,000) Dollars (\$1.00 per acre foot). This water right destruction necessitated legal action by Lessor/Petitioner seeking damages from Western in Colorado State Water Court.



Frontier Materials, Inc., lessee since July 1, 1983, intervened, and said litigation was later required by Frontier to be dismissed pursuant to terms (Section 14.) included in the Settlement Agreement [Appendix "M"] as approved by Bankruptcy Judge C. E. Matheson.

Frontier Materials, Inc.

The mining company of Frontier Materials, Inc. expressed an interest in mining Lessor's property and a mining lease agreement was entered into on July 1, 1983, contingent upon Western rescinding the previous agreement. Through return of \$60,000, Western rescinded the previous agreement and caused the release of Western's interest in the mining property.

The Frontier/Gregory mining lease agreement provided for, among other conditions; 1) an advance royalty of Seventy-five Thousand (\$75,000) Dollars [\$60,000 paid to Western and \$15,000 for purchase of wind-generated



electrical power plant]; 2) total proceeds to be paid over ten (10) years, averaged, was approximately from One Million Two Hundred Thirty-two Thousand (\$1,232,000 @ 2,400,000 tons) Dollars to One Million Five Hundred Eighty Thousand (\$1,580,000 @ 4,000,000 tons) Dollars, before taxes, together with; 3) Frontier mining the Gregory property exclusively until all commercial material had been removed, or for 10 years; 4) mining would commence in April 1984. In addition, Lessor pledged to the "Conservancy District" said augmentation water stock.

Frontier failed and refused to perform pursuant to the lease agreement and breached the lease agreement. Further, it had committed to perform a '1/3 royalty payment agreement' to be paid directly to Grange Mutual Life Co. on behalf of Petitioners. Frontier later pursued the verbalized desire to force the Lessor into a 'foreclosure' position whereby it could



acquire the Gregory property without honoring the lease agreement. Through counsel, Lessor Gregory attempted several negotiating meetings but to no avail. Without Frontier providing mining royalties, Petitioners were unable to meet financial obligations. While negotiations between respective counsel were ongoing, Frontier filed an action against Lessor in Boulder County District Court for preventing Frontier 'possession' of Lessor's land during the negotiating process. The matter necessitated the filing of a counterclaim by Petitioners. Said action later was required by Frontier to be dismissed through terms included in Section 14. of said Settlement Agreement.

Seeking the advise of counsel, Paul Rubner, of 'Rubner and Kutner, P.C.', specialists in bankruptcy, and upon advice of said counsel, on January 21, 1986, Petitioners filed for reorganization under Title 11 of the United



States Code and assigned Number 86 B 0476 G. Counsel assured Petitioners that through reorganization, rejection of the mining lease with Frontier Materials, Inc., would place them in a position to directly commence mining of their property. Said mining would enable Petitioners to meet their financial commitments to their respective creditors. Further, counsel Rubner stated that he would have the Petitioners in a position to commence mining within three (3) months, or April 21, 1986. Although Rubner stated that \$8,000 would be sufficient to cover all reorganization costs, a total of \$15,000 was ultimately requested as retainer for "any unexpected costs". Any balance remaining would pay petitioners 'interest' from counsel's company account.

Not explained to Petitioners by counsel, before filing of the Bankruptcy Petition, was that the law prevented Petitioners from keeping



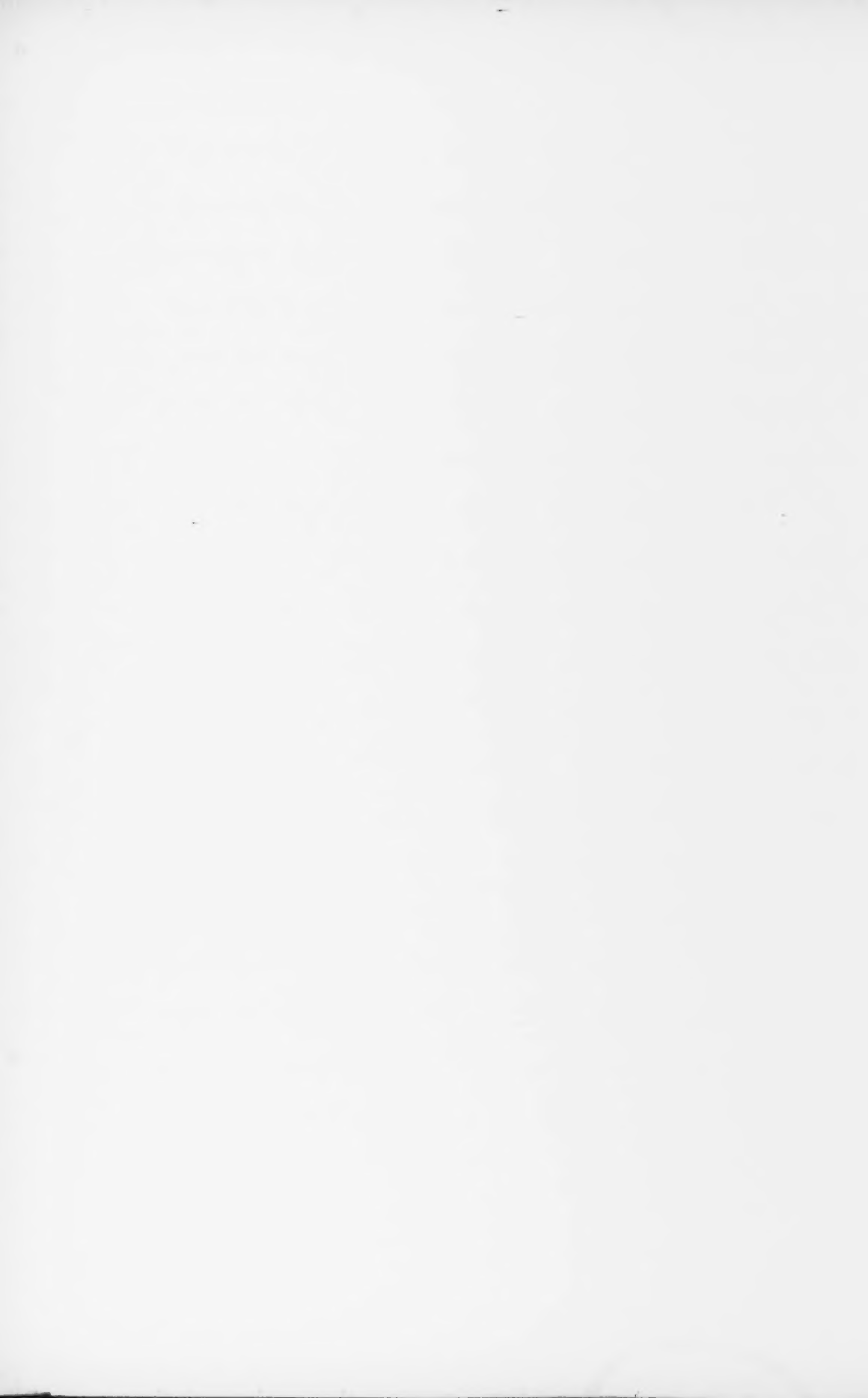
installment accounts current, deprived Petitioners of certain litigation rights, and, that by not keeping accounts current and said accounts being forced into arrears, creditors were permitted to file for 'relief from automatic stay', which, if granted, Petitioners would lose whatever equity in the property they may have. The ranch of 503 Acres (item No. 2., hereinabove listed) in Oklahoma was lost in this manner - an equity loss of \$152,000.

Frontier refused to allow the lease to be rejected and filed objections with the court. Failing to effect a resolution, a Court hearing was set for August 28, 1986. One week before the hearing, both counsels Paul Rubner and Lee Kutner, made a conference call to Petitioners wherein it was stated by counsel, that; 1) they had "used" the \$15,000 retainer; and 2) for them to represent us at trial of the matter, petitioners would be required to advance another



\$15,000; or 3) having negotiated a 'settlement with former associate', Harry M. Sterling, Frontier's counsel, Petitioners must execute said "Settlement Agreement" for continued representation by the firm of Rubner and Kutner, P.C.; or 4) counsel stated they would file a motion to withdraw as counsel.

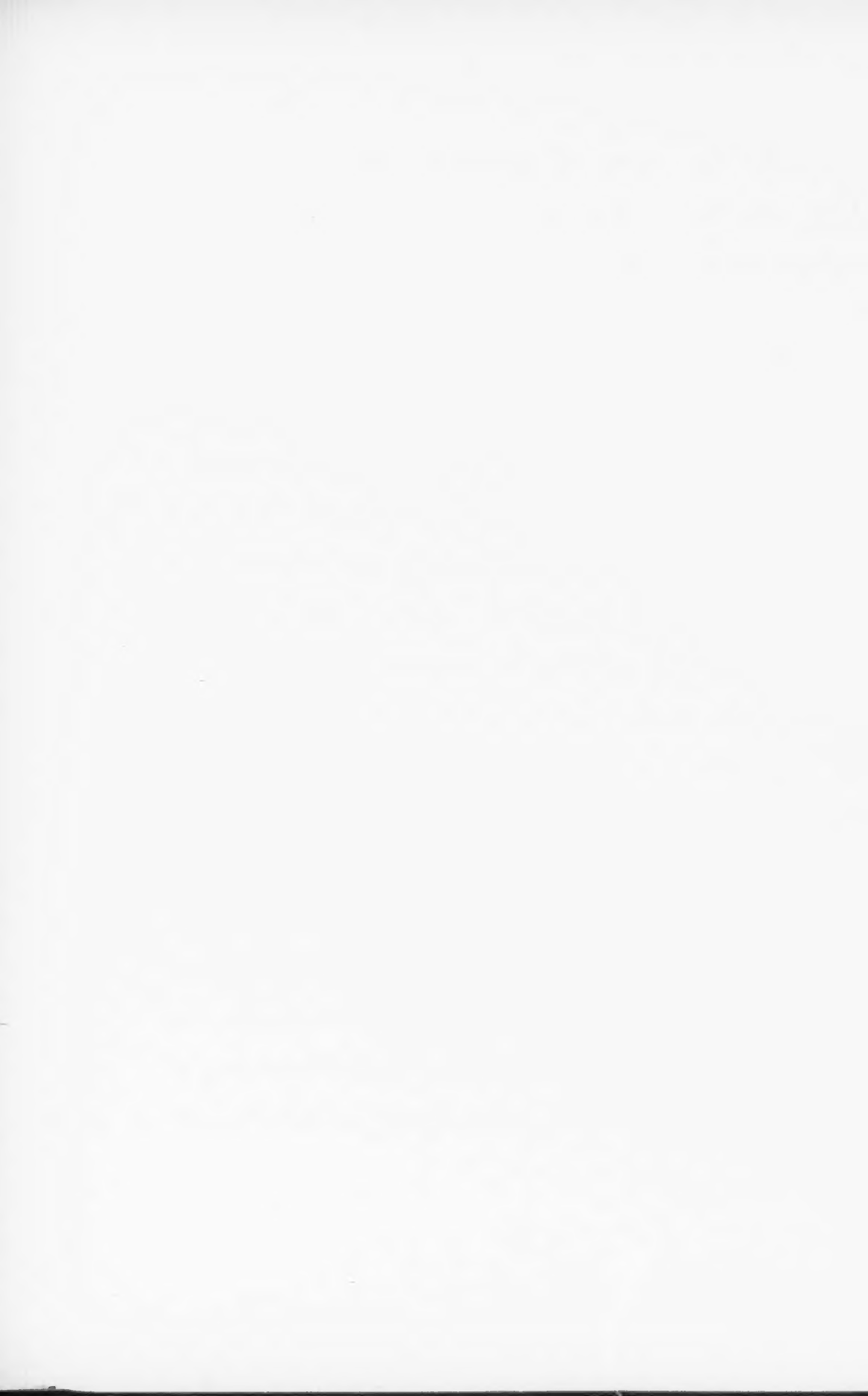
Petitioners protested their concern for being required to pay \$215,000 to Frontier for its violation of the lease and its refusal to perform to agreement. As an inducement, Frontier represented that all mining requirements and authorizations were complete. Counsel assured petitioners they would be fully protected by the court, since it would be a "court-approved document", and further, that mining operations plans could be conducted by Petitioners without further interference from Frontier. Petitioner R. W. Gregory, having no other known alternative, surrendered to these threats and,



on August 21, 1986, he agreed to pay to Frontier \$215,000 for, inter alia, the right to pursue reorganization and mining without interference from Frontier.

On September 8, 1986, U. S. Bankruptcy Court Judge Charles E. Matheson presiding, reviewed and approved the Settlement Agreement, approved the \$215,000 additional debt, affixed his signature to the Agreement, and authorized Petitioners to proceed as necessary to consummate the Agreement [Appendix "N"].

NOTE: After executing Said Settlement Agreement, it was learned, early-on, that Frontier had fraudulently misrepresented the status of the mining permits and did not have all necessary permits, and that Frontier was in violation of the regulations and 'commitments of record', and that Frontier failed to perform pursuant to County regulations and orders. Frontier acted to cancel the mining bond included in Settlement



Agreement, and later attempted to cause cancellation of the later 'Petitioners acquired' Boulder County mining permits. These false representations, vexatious and malicious acts caused further unexpected and extensive delay, but Petitioners corrected all Frontier deficiencies and provided further commitments at great cost.

With the authority granted by the Court, Petitioners proceeded to do all as necessary for 'confirmation' and to commence the mining project and; 1) obtained investors in the project, [through endeavors by their Son, R. W. Gregory, Jr.];

2) engaged experienced personnel to accomplish the pre-mining preparations and mining operations;

3) prepared the property for mining;

4) built roads in to the mining site;



5) fenced the mining area pursuant to agreement;

6) installed truck scales and scalehouse;

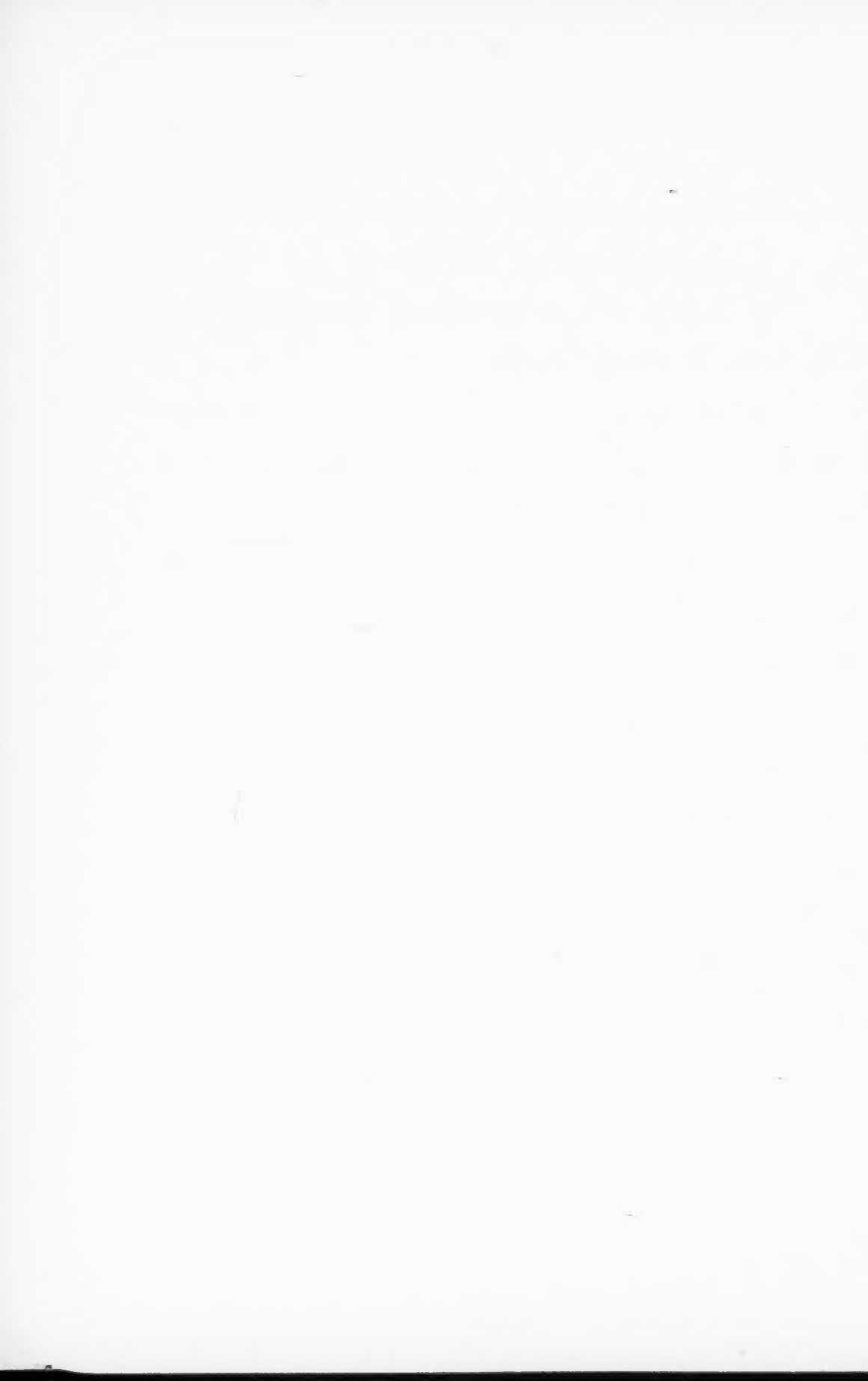
7) acquired mining equipment; and

8) acquired all necessary Colorado State and Boulder County permits.

Petitioners were ready to produce commercial quantities of quality aggregates on or before March 20, 1988.

Frontier violated and breached further Settlement Agreement provisos more fully described in Appendix "O-1 and O-2".

The Court did not act to protect Petitioners by enforcing terms (Section 10.) of said Agreement, but rather, subtly acted to promote and encourage Frontier to act to defeat terms of the Settlement Agreement. Petitioners, through counsel, objected to Frontier's acts which were contrary to intent of the Settlement, but the court, disregarding direct objection by

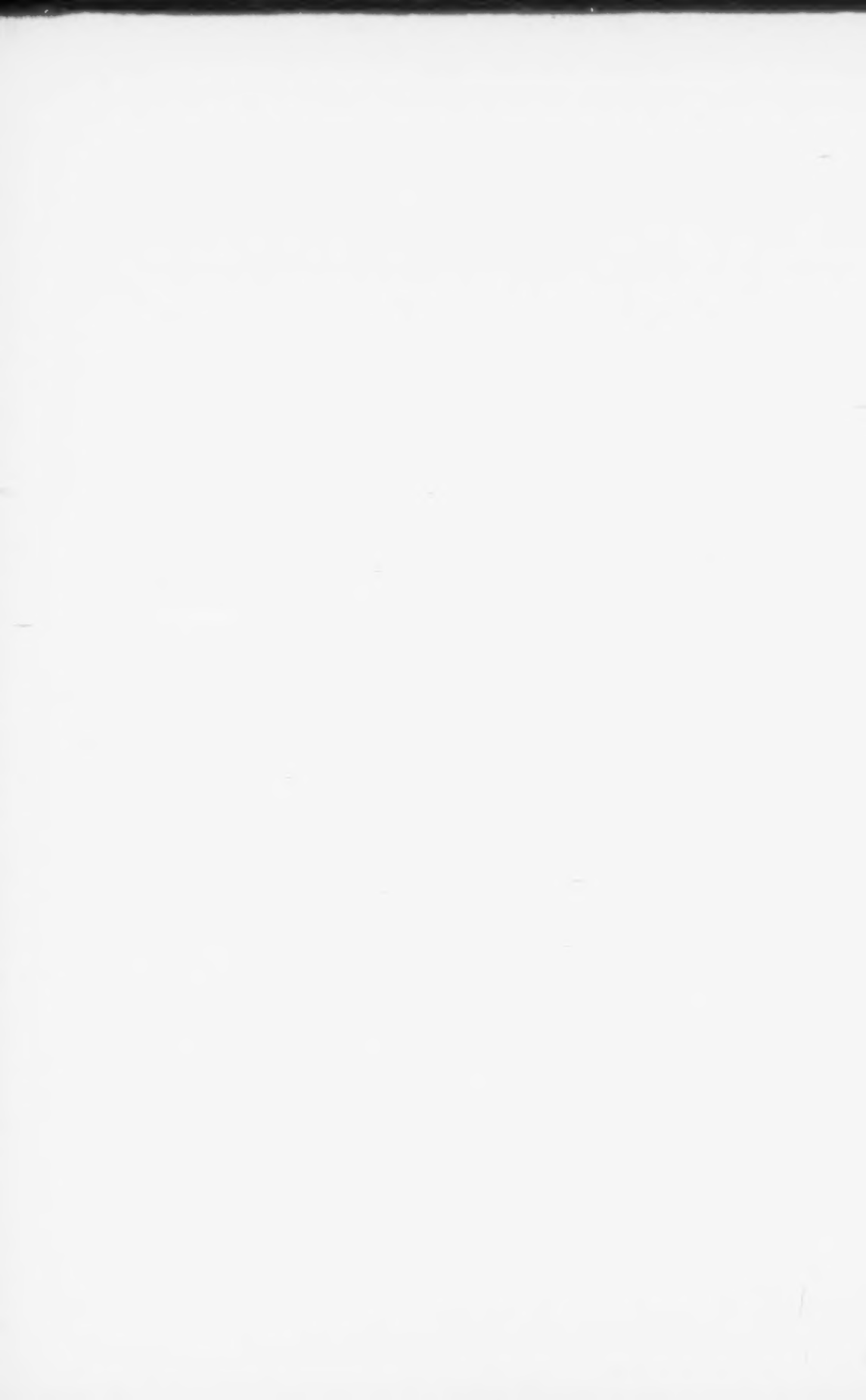


Petitioners counsel, ruled against Petitioners and allowed Frontier to continue their opposition to the plan proposed by Petitioners.

On February 26, 1988, the Court denied 'confirmation' of the plan of reorganization and, Sua Sponte, 'converted' the Chapter 11 Reorganization case to one under Chapter 7 Liquidation.

Petitioners Counsel, Philip A. Pearlman, stated to Petitioners that the ruling by Judge Matheson was unfair and wrong, but he would not take the 'appeal' without further payment. Having exhausted all savings on reorganization and being denied the right to generate income, having exhausted their retirement funds, and without any income, Petitioners were committed to pursuing their cause - Pro Se.

NOTE: Here, to provide some background to the concept of bankruptcy among lawyers practicing in the District of Colorado, together with the

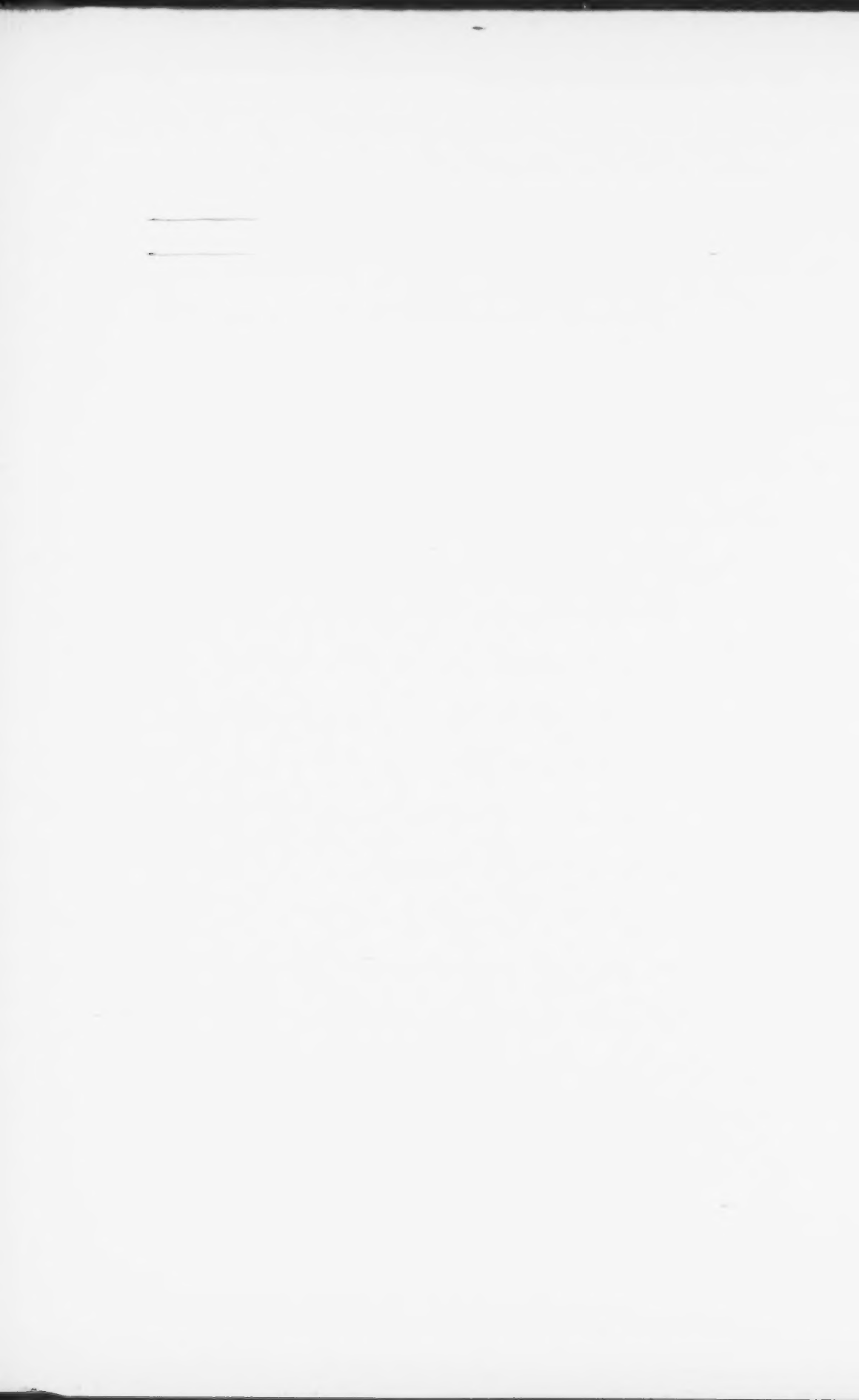


practices of the Bankruptcy Court for the District of Colorado, the intent of Title 11 of the Bankruptcy Code requires some inquiry. The following statement is an excerpt from a seminar on bankruptcy as taught by Sidney B. Brooks, (now Bankruptcy Judge in the District of Colorado and to whom Petitioners case has been assigned) together with an expanded statement by Petitioners which is supported by the record.

1. "...your (debtor) clients will lie..."

a. This statement and attitude toward debtors is an automatic bar to fair, impartial, and unbiased treatment of all debtors and is clearly indicative of prejudice toward debtors and bias for creditors within the court system for the District of Colorado.

On March 15, 1988, Petitioners filed Notice of Appeal from the 'Order of Conversion' to the United States District Court for the District of Colorado. The Bankruptcy Court included a "note"



to the District court that "the appeal was not timely filed" [Appendix "R"]. On March 31, 1988, Judge Sherman G. Finesilver, (a judge with an extensive list of credentials and experience) coincidentally but contrary to rules and law, denied Petitioners appeal as "not being timely filed", which order required further appeal.

On April 14, 1988, Judge Matheson, responding to Frontier's Motion to Dismiss, denied the Motion for Stay Pending Appeal as 'Moot' because the United States District Court had denied Petitioners their appeal.

In April 1988, Petitioners filed a Notice of Appeal to the Court of Appeals for the Tenth Circuit, appealing the dismissal of their appeal in United States District Court from decisions of the Bankruptcy Court. On February 22, 1989, said Court of Appeals reversed the lower court decision and reinstated Petitioners appeal, but such reversal was not in time to prevent the



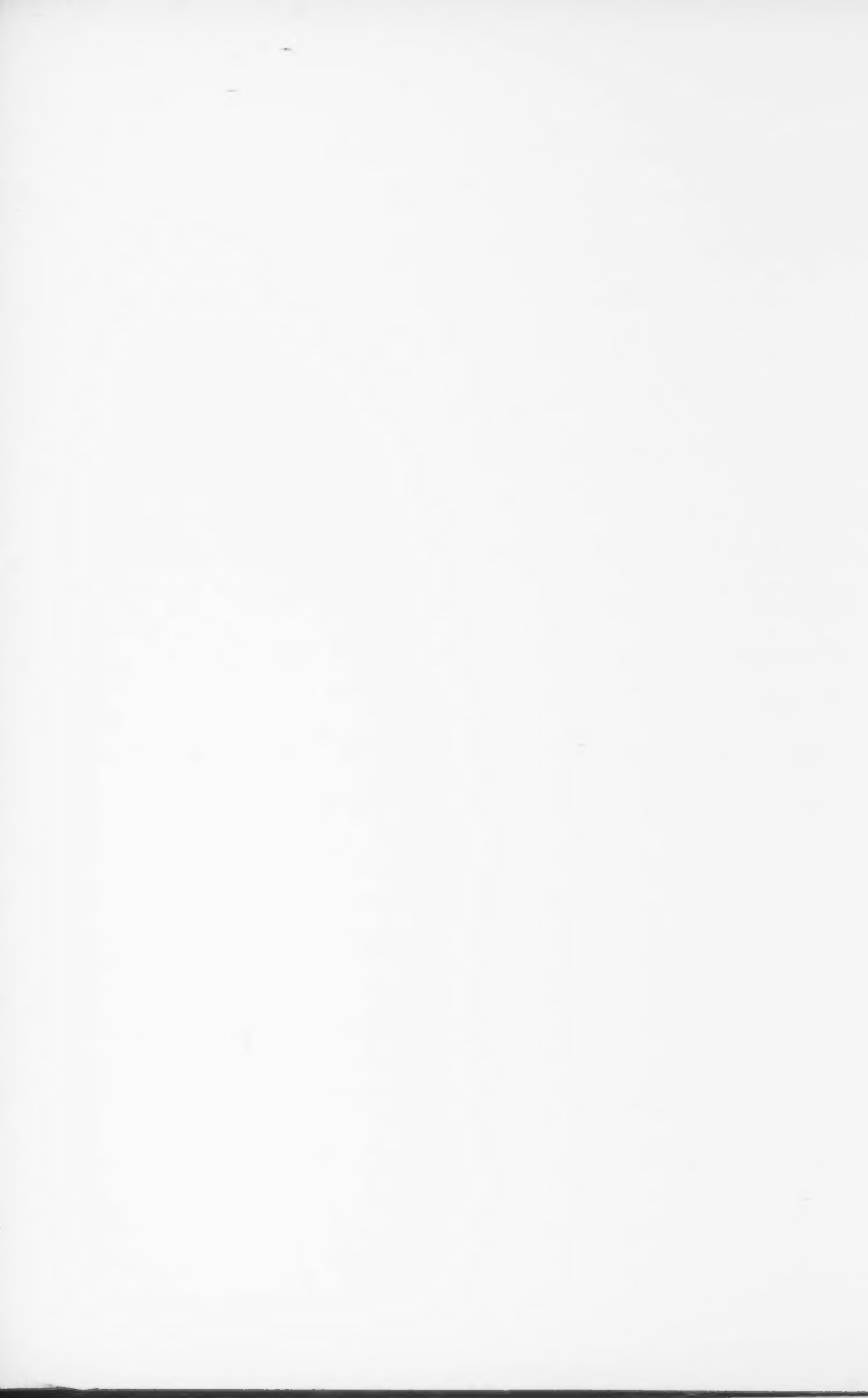
December 9, 1988 sale by Judge Matheson and subsequent loss of Petitioners most valuable property necessary for reorganization.

At the December 9, 1988 hearing, the Court quashed a subpoena and deprived Petitioners of needed information regarding testimony presented by Frontier and their appraiser. During this hearing, and during an extended absence by applicant Ross J. Wabeke, alleged Interim Trustee, the Court permitted Frontier to prosecute the application during the absence of the applicant.

NOTE: The record does not reflect an Order appointing Wabeke as trustee pursuant to 11 USC 303(g), which states:

"(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States Trustee to appoint an interim trustee..."

and Bankruptcy Rules 2008, supporting Section



303(g), and X-1004 specifying trustee's bond, the record does not reflect the filing of an approved bond by Wabeke.

Bankruptcy Rule 5003(a) states:

"the clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made." (Emphasis Added)

On December 9, 1988, over objections of Petitioners, U. S. Bankruptcy Court Judge Matheson approved the application of Wabeke to sell to Frontier for \$845,000 the valuable mining property necessary for reorganization, and included with the sale \$120,000 augmentation water rights, all other water rights, all mining permits acquired by Petitioners, notwithstanding Wabeke had rejected the Settlement Agreement by reason of non-action and pursuant to 11 USC 365(d)(1) which states:

"In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal



property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected."

Wabeke sold Petitioners rights and interest in the Court-approved Settlement Agreement and executory contract he 'rejected'. Wabeke's appointment cannot be confirmed and both Wabeke and U. S. Trustee have denied Petitioners the right to examine the Petitioners file, pursuant to 18 USC 154 [Appendix "F-1"] and 11 USC 704(7) [Appendix "D"], as compiled by Wabeke. Further, Wabeke has a current motion filed with the Bankruptcy Court seeking for authority to deny Petitioners access to said file. It must be called to the attention of this Court, that the \$845,000 sale price, less \$120,000 'paid for' water stock, less \$50,000 cash all paid by Petitioners pursuant to "Settlement Agreement, less \$185,000 credited balance of the 'thin air/\$215,000' debt creation, less the legal and



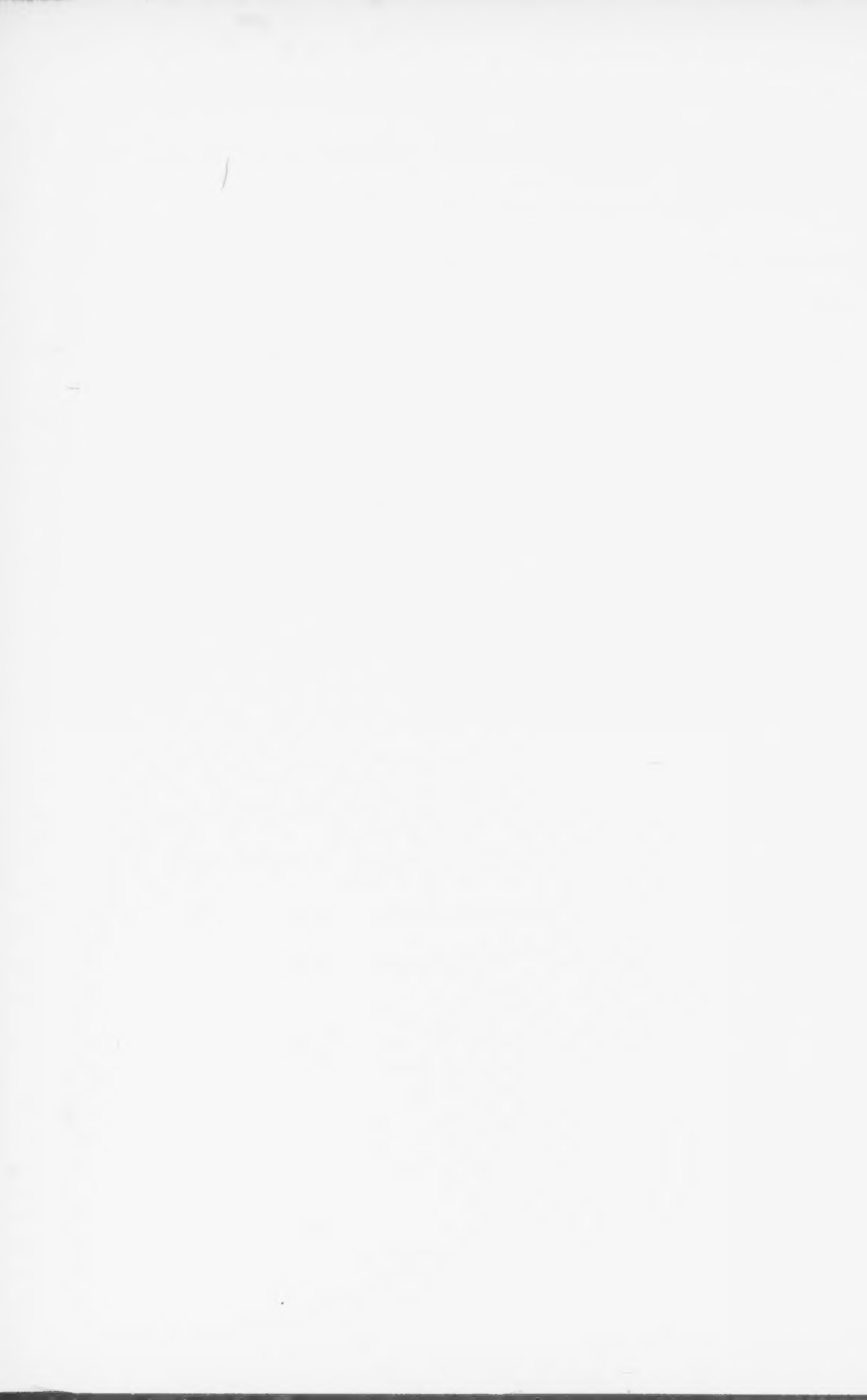
regulatory costs for all required mining related permits, that the actual price paid by Frontier Materials, Inc. for the \$3,543,000 property was less than \$490,000 - or a shocking 13.8% of its minimal value. Such approval was granted by the court disregarding a better 'standing' offer as presented from the courtroom, (\$300,000 more to Creditor Grange, who refused the offer) than Wabeke's application. Said 'offer' also allowed Petitioners to retain the ownership of the residential properties appraised at \$255,000.00 together with a salaried position as an executive officer of said mining parcel within a composite mining group.

On December 9, 1988, it was discovered through "personal 'handwritten' notes" made by Judge Matheson (in exhibit package returned by the court) that during the course of said confirmation hearing on February 26, 1988, and subsequent thereto, Bankruptcy Judge Charles E.

Matheson, harbored personal prejudice and bias against Petitioners and he failed an ethical requirement to recuse pursuant to 28 USC 455. Said notes contained prejudicial descriptions and comments against Petitioner R. W. Gregory. Said 'notes' were not obtained from the testimony nor from evidence presented. Gregory testimony, as stated, was that: he had been an airline pilot with Frontier Airlines for 25 years; he owned a general store, restaurant and lounge; he owned and operated 3 ranches whereon he raised cattle and buffalo; and he was of Native American Heritage - Delaware Nation. Said 'notes' described "Gregory an airline jockey, bartender, and buffalo humper:" To Petitioners' counsel's closing statements, the 'notes' reflect the statement "Pearlman - SHUT UP!".

"Any...judge...in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 USCS 455(a)

"...any judge...shall disqualify himself in a bankruptcy case under certain conditions



involving interest or an appearance of influence." Bankruptcy Rule 5004

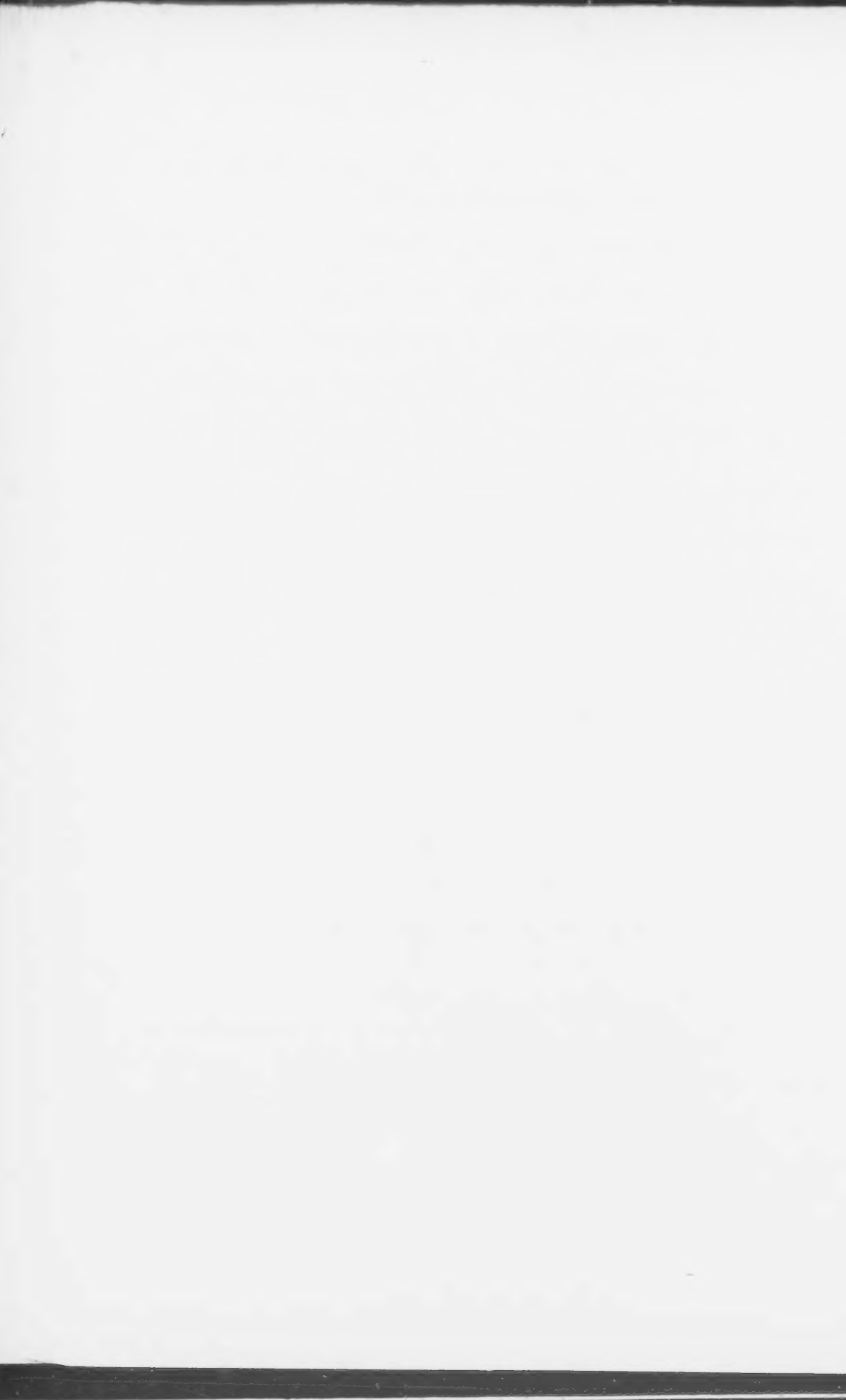
Said personal prejudice and bias deprived Petitioners of fair and impartial hearings, rights and property not in accordance with law.

Pursuant to this new discovery, Petitioners filed the following: On December 19, 1988, 'Motion for New Trial'; On December 30, 1988, 'Motion to Disqualify Judge'; and on January 9, 1989, 'Motion to Transfer Proceedings'.

On January 3, 1989, Judge Matheson, after passing on said motion, recused pursuant to the 28 USC 144 motion.

On January 12, 1989, a Writ of Prohibition was sought from the Court of Appeals for the Tenth Circuit to prevent acts contrary to Local Rule 23 and law. Said Writ was denied by Court of Appeals.

On January 13, 1989, and not in accordance with local Rule 23, the motions for 'New Trial' and 'Transfer of Proceedings' were denied by



Bankruptcy Judge Sidney Brooks, newly assigned.

Petitioners appealed to the United States District Court from the denial of new trial, denial of transfer of proceedings and from the sale of estate property.

A Motion for Temporary Injunction was filed in the Court of Appeals for the Tenth Circuit for immediate relief from the acts hereinabove described.

On February 22, 1989, the Court of Appeals reinstated Petitioners original appeal from conversion to Chapter 7 from Chapter 11 but the court refused to grant the temporary injunction motion describing it as "moot".

On February 27, 1989, because of the 'reinstated appeal', Petitioners filed a "Renewed Motion For Stay Pending Appeal".

On March 1, 1989, Frontier filed a "Demand for Possession" for said reorganization property as sold on December 9, 1988 by Judge Matheson.

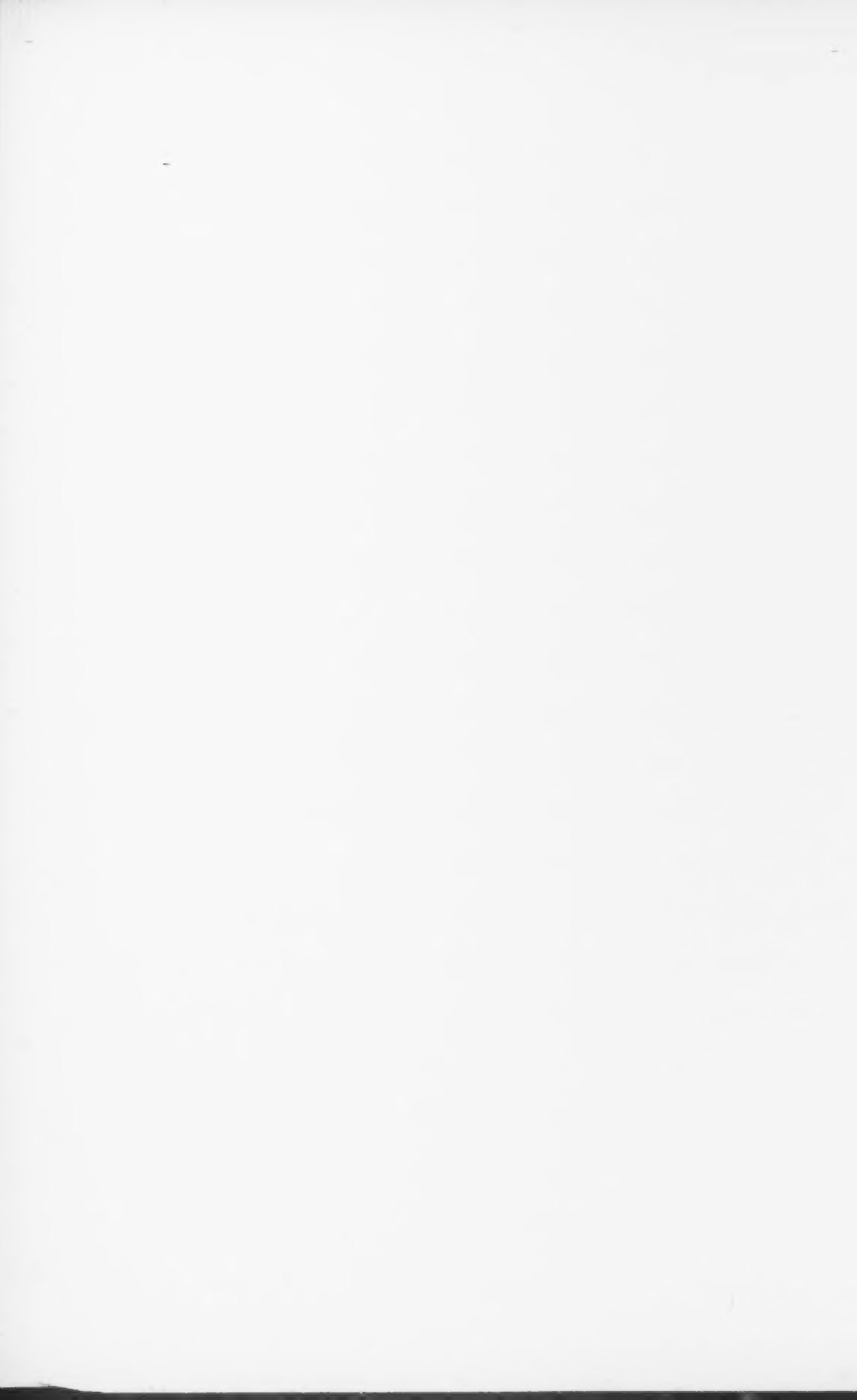


On March 6, 1989, Petitioners responded by filing a Motion for Temporary and Permanent Injunction with United States District Court.

On March 17, 1989, Judge Finesilver denied said motion for injunction. Coincidentally, on March 17, 1989, Boulder County District Court denied Petitioners Motion to Dismiss Frontier's action to gain possession of said property.

On March 21, 1989, United States Bankruptcy Judge Brooks denied Petitioners motion for Renewed Stay Pending Appeal. Further, Judge Brooks violated Bankruptcy Rule 5001(a) by threatening Petitioners with sanctions if they filed any further papers in the bankruptcy court in defense of their property and rights, thus depriving Petitioners of their Fifth and Fourteenth Amendment rights of access to the courts and due process.

On March 29, 1989, Petitioners filed "Petition for Removal of Civil Action" from



Boulder County District Court to United States District Court seeking a trial by jury in the matter of the "Demand For Possession".

On March 31, 1989, Judge Finesilver of the United States District Court referenced said petition for 'removal and jury trial' to the Bankruptcy Court where Petitioners in April 1988 had previously been denied "standing" and on March 21, 1989, threatened with "sanctions" if Debtors filed further "papers", etc. Through said 'reference' by the District Court, denial of "standing" and "threats" by Bankruptcy Court, Petitioners were deprived of access to the Courts, jury trial, and due process for which to act in defense of their rights and property.

On April 7, 1989, Petitioners filed a "Notice of Intent to Redeem" property of the estate necessary for reorganization (to which Wabeke, Frontier, and Grange objected). On April 13, 1989, Petitioners filed a "Motion to



Dismiss" the bankruptcy proceedings (to which motion objections by Skeen and Pearlman, P.C. were entered by Philip Pearlman, Petitioners' former attorney, and Wabeke).

On April 24, 1989, notice was received that Wabeke had illegally claimed and confiscated a \$31,554 'mining bond' Certificate of Deposit - not property of the estate - which had been posted by Petitioners son, from his bank account bearing his social security number, on behalf of investors in said proposed mining project.

On April 25, 1989, an Order was entered on the docket allowing sanctions against Petitioners.

On April 29, 1989, Petitioners received notice of a "Writ of Restitution" and 'Default Judgment' issued by Judge Patricia A. Clark of the Bankruptcy Court on behalf of Frontier. On May 1, 1989, Petitioners filed a Notice of Appeal from the final judgment wherein



Petitioners were adjudged in "Default" for non-appearance in a court where the judges denied standing, and allowed sanctions for acts defending their property.

On May 15, 1989, Petitioners were forcibly removed from their 'reorganization' property, rendered homeless, forced into insolvency, and deprived of means for support.

On July 31, 1989, United States District Court Judge Finesilver, having on March 31, 1988 denied Petitioners their appeal from February 26, 1988 conversion, entered his "Memorandum Opinion and Order" AFFIRMING the Bankruptcy Court decisions of conversion; December 9, 1988 sale of estate property; January 13, 1989 improper Order denying transfer of the proceeding; declared the objection to sale of the debtors' property as "moot"; and refused to rule on remaining issues contending that debtors failed to litigate said issues. From this

ruling, an appeal to Court of Appeals for the Tenth Circuit was commenced.

Petitioners were represented by two separate law firms between the January 21, 1986 and February 26, 1988 dates of the bankruptcy proceedings, but they were not kept fully informed by counsel of the bankruptcy proceedings; nor informed as to the ramifications of the proceedings; nor would counsel act on their request to defend their position as to the procedures and collusion being implemented against them by their adversaries and the Court. Further, counsel Pearlman was never given the authority by Debtors to act in any matter approving or recommending conversion, and he was specifically cautioned orally and in writing not to waive any rights of the Petitioners.

Petitioners, since February 26, 1988 and being required to proceed pro se, have attempted

to learn, conduct their own research and studies necessary to pursue the defense of their lives, liberties and property as free citizens of the United States.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for several reasons as follows: The existence of fraud consistent with 18 USC 1961 [Appendix "F-2"]; issues created by an act of Congress - Title 11 of the Bankruptcy Code - with sections in conflict with Constitutional and Statutory prerequisites; deprivation of rights guaranteed by the United States Constitution; and a conflict between the Code and appointments of judges whose prejudicial foundations do not meet standards necessary for fair and impartial rulings concerning all debtors subject to the Bankruptcy Court systems, and by implication, whose decisions are contrary to the intent of the Acts of Congress.



As to statutory conflict, Legislative statements regarding Title 11 of the United States Code, from HR 5316, states:

"The sooner a bankruptcy case can be terminated, the sooner the debtor can get a fresh start towards making a meaningful contribution to our nation's economy, and the sooner creditors can receive payments of debts owed them." [Emphasis added]

Termination appears to be interpreted by the Bankruptcy Court in the District of Colorado by throwing the debtor into Chapter 7 liquidation rather than allowing reorganization and confirmation, thus preventing creditor payments 'in full' and preventing the intent of Chapter 11 reorganization law.

This same report also states the only qualifications for a bankruptcy judge, simply are as follows:

"Under current law, in order to qualify to be bankruptcy judge, an individual must be a member of the bar of one of the 50 states or the District of Columbia", or Puerto Rico.



This law appears to lack important ingredient requirements of "impartiality" and "fairness". Inquiry into the appointments of the bankruptcy judges in the District of Colorado reveal a tendency to appoint judges who emanate from 'creditor-oriented' law firms' (e.g. Judges Matheson and Brooks) to rule on 'debtor-oriented' problems. By 'creditor-oriented' is meant that this type of law firm will represent only "creditor" clients. Therefore, the debtor is faced immediately with judicial inclination of prejudice against a debtor and bias towards a creditor, which attitude then is to disregard the intent of the Bankruptcy Code. For a debtor to overcome that judicial "inclination" in the District of Colorado is a virtual impossibility. To explain, in the District of Colorado, between January 1986 and February 1988, the number of Chapter 11 Reorganization Cases before Judge Charles E. Matheson were 221, Chapter 12 cases



numbered 28, with 145 cases still open, One - Chapter 11 case had been confirmed, 99 cases had been dismissed or converted, and 4 had been settled.

1%, or less, of Chapter 11 cases filed are being confirmed, hardly in line with a law inducing one to seek protection of the Code, which was designed to provide a means for debtor reorganization and to enable one to service their financial obligations. Rather, as in this instant case, it has been one of design to grant 'favored status' to Frontier Materials, Inc. and maliciously, knowingly and willfully force insolvency and to totally financially decimate any means for Debtors to meet financial obligations, including survival, through a botched and incompetent liquidation process.

"Since the policy of Chapter 11 is to permit successful rehabilitation of debtors... Determining what would constitute a successful rehabilitation involves balancing the interests of the debtor, creditors,...and in striking the balance the court must consider not only the hardship faced by each party but also the



qualitative differences between the types of hardship each may face."

N.L.R.B v. Bildisco and Bildisco,
104 S.Ct. 1188, 1190 (1.(c)) (1984).

Again, in this instant case, the Bankruptcy Code as implemented by the Colorado Courts, failed dramatically as to the intent of said Code. As of the date of this Petition for Writ of Certiorari, only one creditor is known to have been provided with any compensation (Grange) plus the illegal acts and gains of Wabeke, and Petitioners adversary, Frontier Materials, Inc., who was creditor 'created' by the "Settlement Agreement", an agreement devised after filing Chapter 11 and obtained through intimidation. Disregarding said Settlement Agreement, and with the assistance of said bankruptcy court, Frontier was granted insider status, and through acts contrary to said Agreement, was presented with the opportunity to acquire the most valuable debtor property at a fraction of its true value. All parties in



interest suffered because the Court favored this one "creditor" over all other creditors, and further, deprived Debtors of the rights which were to be accorded them pursuant to said Settlement Agreement and the rights to be accorded them under the intent of Chapter 11.

Said Settlement Agreement, unknown to Petitioners at the time, was granted contrary to the intent of the Code and not in accordance with law of 11 USC 362(a) [Appendix "D"].

The act forced upon debtors by counsel to execute the Settlement Agreement, approval by the Court, and the Order by the Court authorizing Debtors to "take such actions as are necessary and convenient to consummate the Settlement" were contrary to the hereinabove quoted law. Said law - 11 USC 362 - is further clarified by the House and Senate Reports (Reform Act of 1978), as follows:

"Paragraph (4) stays lien creation against property of the estate. Thus taking possession to perfect a lien or obtaining court process is



prohibited. To permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead unsecured." (including the creation of a creditor) [Emphasis and parenthetical added]

Although there were supposedly protective clauses in said illegal Settlement Agreement for the benefit of Debtor, the Court allowed any protective clauses to be abrogated by Frontier Materials, Inc. Said abrogation was the direct cause of the loss of debtors property without due process of law and in violation of law together with the loss of investments made by others not subject to the jurisdiction of said court. Judge Brooks later denied said investors, through fiduciary R. W. Gregory, Jr., the right to intervene to protect their interests. Further, Judge Brooks permitted Wabeke to control, convert, and/or sell to Frontier equipment valued at \$330,000 for \$41,000, these investor assets contrary to Bankruptcy Rule 2018(a) [Appendix "P"] and 11 USC 1109(b)

[Appendix "D"].

At the sale of Debtors property on December 9, 1988, Judge Matheson, incorporating statements made by Frontier Materials, Inc. counsel, not in evidence nor under oath, incorrectly and not admitted in the record, wrongly stated and ruled, as follows:

"The property was encumbered by a mining lease...a lease which the debtors elected to reject...that the rejection was in bad faith ... for the sole purpose to secure additional profits for himself... "

Judge Matheson continued his statement, opinion, and admission to violating 11 USC 362(a)(4):

"That controversy was resolved by way of a settlement, the execution of a note secured by a second deed of trust on the property to Frontier Materials. The present balance outstanding on that note is approximately \$185,000, and I concur with the argument of counsel for Frontier Materials that since that was a note issued out of the debtor-in-possession's estate in settlement of a controversy post-petition, that \$185,000 (\$215,000 less \$50,000 paid in 1987) undoubtedly was an administrative claim, at least in the Chapter 11 estate, which now converted, would be second in priority to the administrative claims in the Chapter 7 estate."

[Dec. 9, 1988 Transcript, p.3, l. 7-25; p.4, l. 1-4]



The United States District Court, in its July 31, 1989 Memorandum Opinion and Order, stated that it could not review the issues of the "Settlement Agreement" and "bad faith" since they were not raised in Bankruptcy Court. Yet the direct testimony of the Debtor, the issue of the "breach" of the Settlement Agreement, the attempts to thwart Debtors' reorganization, and the issue of "bad faith" and "fraudulent misrepresentation" by Frontier Materials, Inc. was given at length. Frontier, under the right to cross examine said Debtor, chose not to contest the issues presented and remained silent, thereby acknowledging that the testimony, as was given under oath, was fact, also knowing that the charges were readily provable by Debtor. The Court chose not to inquire into Debtor's sworn testimony with regard to the charges against Frontier. Additionally, 18 USC 3057 [Appendix "F-2"] was



available to Judge Matheson to conduct an inquiry into said allegations.

Petitioners believe that Judge Finesilver had every authority to investigate the fraudulent acts permeating said case, and such Opinion and Order is then in conflict with 18 USC 3057 dealing with the authority and powers of the court.

Regardless of the efforts or money expended, the petition of any debtor is generally denied - unless the petitioner is in a class of great financial eminence.

For example, the rulings of the bankruptcy court in the District of Colorado are generally in conformity to teachings from the hereinbefore-mentioned seminar for other lawyers, by Judge Brooks prior to his appointment i.e. that: (1) "the Bankruptcy Code is designed to protect debtors"; and that (2) "the court is designed to be there to help the



debtors". But, in reality, while professing one thing of support for the law, there is also the revelation that the power of the court carries the threatening and summary punishment of debtors out of favor with the court. Judge Brooks' further statement, "a bar from discharge is a" (form) "of financial capital punishment" (which) "will ruin the" (debtor for) "the rest of their lives" (and) "they will never once again get back on their financial feet" (because this power is) "discretionary with the court" (when) "not in good faith" appears as a veiled threat to all petitioners.

Now, if all debtors are considered "liars", then what amount of effort can ever convince a court prejudiced with this 'debtor concept' that the debtor is sincere and operating in "good faith"? And with said concept, a debtor defending his rights is then always subject to suffering the wrath and punishment of the judge.



Permitting debtor additional, and substantial, debt (which originated with intimidation and threat by counsel) by authorizing a Settlement Agreement which 'created a new creditor' (to the detriment of the Estate and legitimate creditors) and then later refusing to enforce the provisions and terms of said Agreement, Judge Matheson operated in violation of law - 11 USC 362 - and of the intent of Congress and of debtors' rights.

To convert Debtors from Chapter 11 reorganization to Chapter 7 Liquidation Sua Sponte was a violation of law and an abuse of power and discretion. Judge Finesilver ruled that 11 USC 105(a) was the court's power for Sua Sponte rulings by the bankruptcy court. But 11 USC 105(a) clearly states that this broad power is to be exercised

"...to enforce or implement court orders or rules, or to prevent an abuse of process."

There was no evidence or indication that



Debtors were abusing the process or violating any court order or rule, nor was there a charge to that effect, and contrary to Federal Rules of Evidence 602 and 803 [Appendix "Q"] the court excluded financial evidence supporting the confirmation. Said evidence included (1) two letters of intent to purchase significant amounts of aggregate products; (2) signature pages on proposed Limited Partnership Agreement where signatories had already advanced the funds to purchase hereinbefore mentioned equipment; and (3) testimony from investor Rolf Schwenninger of AMBS Trust, who was unable to attend because of overbooked flights (Judge Matheson refused to continue this important hearing from Friday, February 26, 1986 to Monday, March 1, 1986 to obtain said testimony). All of the foregoing, through sustained objections made by Frontier, excluded this evidence notwithstanding personal knowledge as

testified to by witness R. W. Gregory.

Yet, the court refused to act where there was cause to exercise 11 USC 105(a) where efforts which not only 'threatened' the debtors' ability to reorganize, but actual and specific schemed acts by Frontier, designed to not only "threaten", but to prevent Debtors ability to reorganize.

"Section 105 authorizes injunction of litigation which could threaten a debtor's ability to reorganize."

In re A.H. Robins Co., Inc., 828 F2d 1023 (CA4 1987);

A. H. Robins Co., Inc. v. Piccinin, 788 F2d 994 (CA4 1986);

The Debtors' assets far exceeded the debts in the case and there was no proof or testimony that the Estate was diminishing in a manner sufficient to exercise the power of Sua Sponte conversion.

"Bankruptcy Court abused its discretion in enjoining...proceeding which did not represent threat to assets of the debtor."

In re Tucson Yellow Cab Co., Inc., 10 BCD 217, 27 BR 621 (Bankr App Panel 9th Cir, 1983)



Additionally, in reference to conversion, 11 USC 1112(b) specifically states that "...on request of a party in interest...and after notice and hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause..." (Emphasis added)

No party in interest requested conversion. Grange requested dismissal (2/26/88 Transcript - p.68, 1.5). No logical cause was specified or charged. The Court, contrary to 11 USC 1112(b), exhibiting "bias" (Grange statement number "(1)" in their Answer to Appellants' Opening Brief/ 89-F-428) for Frontier, converted the case from chapter 11 to chapter 7, Sua Sponte.

Conspiracy between the Bankruptcy Court and United States District Court For the District of Colorado is evident in the "note" incorrectly and improperly added by the Bankruptcy Court "advising" the United States District Court that the appeal from conversion had not been timely filed. As hereinbefore mentioned, Chief Judge

Sherman G. Finesilver, a judge with years of experience in law, ignoring (two times) the simple and commonly used 'time computation' Bankruptcy Rules 8002(a) and 9006(a), ruled on March 31, 1988, that Debtors "untimely filing" of appeal deprived said court of jurisdiction (88-F-428) and the Bankruptcy Court denied a "Stay Pending Appeal" as "moot". Said ruling required an appeal to the Court of Appeals for the Tenth Circuit. Said Court reversed and reinstated said appeal on February 22, 1989.

In the meantime, the delay caused by said alleged conspiracy enabled the Bankruptcy Court, on December 9, 1988, in collusion with Frontier and Grange, over the objections of Debtors, and contrary to the evidence, to dispose of Debtors most valuable property, which was the mining property necessary for reorganization, and set the stage for the complete destruction of Petitioners' estate.

"Decision of court to exclude evidence is



inconsistent with substantial justice."
Federal Rules of Evidence 103 [Appendix "Q"]
U.S. v. Long, (1978 CA3 574 F2d 761,
99 S.Ct. 577.
Whitehurst v. Wright, (1979 CA5 Ala)
592 F2d 834.

18 USC 241 [Appendix "F-1"] states, in part, as follows:

"...makes conspiracy to interfere with a citizen's free exercise of any right or privilege secured by the Constitution or the laws of the United States a criminal offense."

In a 42 USC 1983 case it was stated as follows:

"A person establishes liability under "1983" by showing that defendants either personally participated in the deprivation of the plaintiff's rights, or caused such a deprivation to occur. (Emphasis added)

Harris v. City of Roseburg, (1981 CA9)
664 F2d 1121.

"...immunity defense be overruled...which could authorize liability where the official has acted with 'malicious intention' to deprive the plaintiff of a constitutional right or to cause him 'other injury'. This part of the rule speaks of 'intentional injury', contemplating that the actor intends the consequences of his conduct."

Procunier v. Navette, 434 US 555,
98 S.Ct. 855.

42 USC 1985(3) states, in part:

"...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or



property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured may have an action for recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

The foregoing described acts of conspiracy and collusion, and acts designed to interfere with the intent of the Bankruptcy Code and the Constitution and Laws of the United States, more than sufficient for enacting 18 USC 3057 [Appendix "F"] have all been clearly brought to the attention of to the Courts within the District of Colorado.

Petitioners qualified under the Minority Business Enterprise program of the State of Colorado as 'one of 3' known businesses so qualifying as an aggregate producer in the State. The acts of antitrust (within the meaning and intent of 15 USC 15 [Appendix "E"]), fraud, fraudulent misrepresentation, collusion by the hereinbefore named parties were acts further prohibited under 18 USC 245(b) [Appendix "F"].



Said acts as described have deprived Petitioners of Constitutional rights, property, sales, profits and investment.

In an effort to seek a redress of grievances and recovery, Debtors filed an action against Frontier Materials, Inc. in Weld County, Colorado District Court, seeking a jury trial on the issues of breaches of the Settlement Agreement. Bankruptcy Court, Judge Sidney B. Brooks presiding, responding to Wabeke's motion to replace Debtors as plaintiffs, deprived Debtors of relief in the State Court action, wherein a jury trial was demanded, "Ordered" Debtors to proceed only in the Bankruptcy Court, which harbored personal prejudice and bias against Debtors, and had threatened Debtors not to file further papers, etc., or be subject to sanctions, and where a jury trial cannot be had as demanded, all being contrary to the First [Appendix "G"] Fifth [Appendix "I"], Seventh



[Appendix "J"] and Fourteenth Amendments
[Appendix "L"] to the United States
Constitution.

Ongoing activities within Bankruptcy Case
86 B 0476 A are as follows:

1. The Bankruptcy Court sold the Wyoming
commercial property on April 27, 1990.
Petitioners appealed the ruling. The cause for
appeal follows:

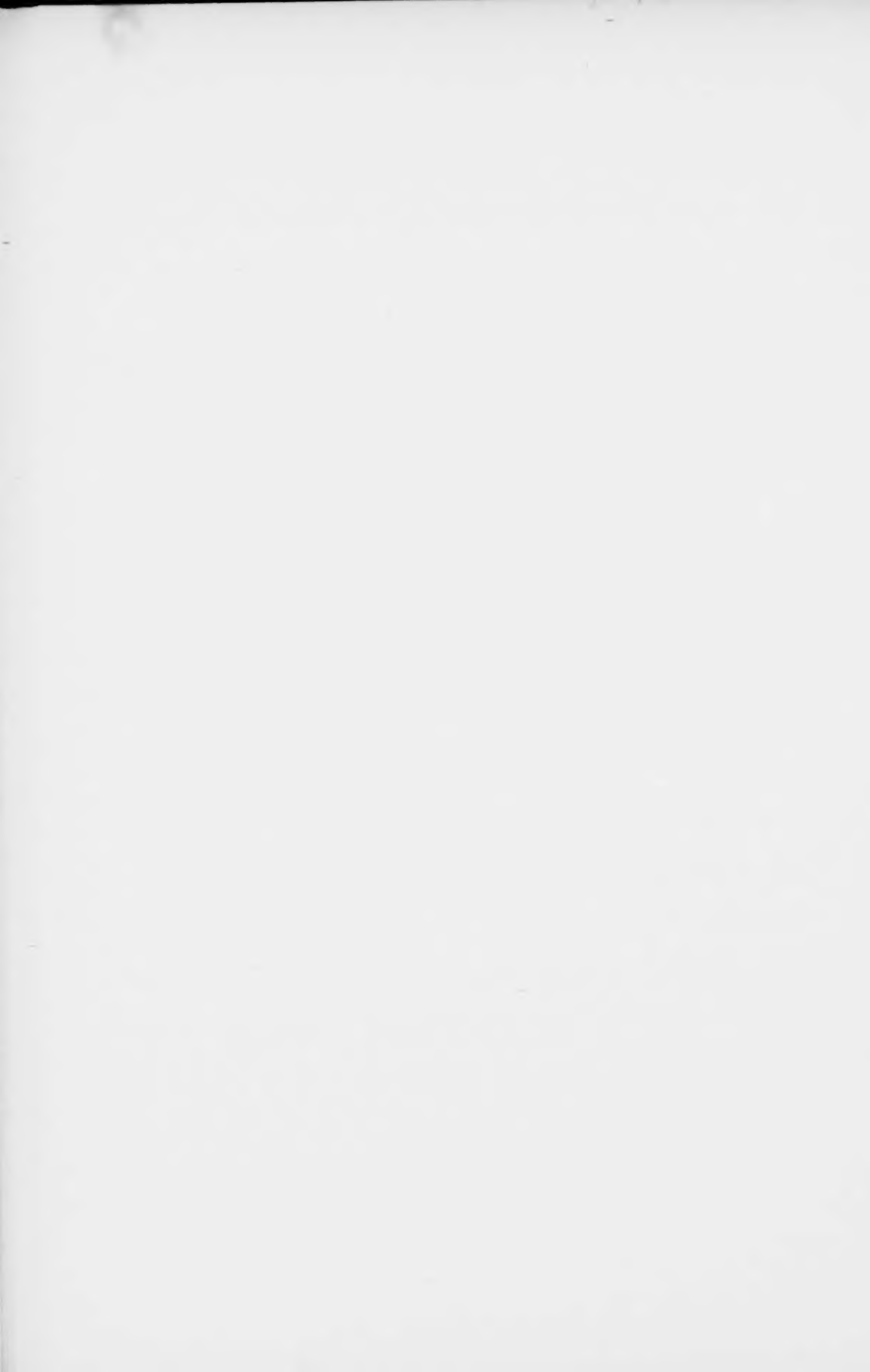
a. Petitioners did not receive timely
notice of the 'application' to sell said
commercial property located in Wyoming. On April
27, 1990, upon learning of the intent to so
sell, Petitioners filed a handwritten objection
to the sale price as applied for, and
recommended that any sale be by public auction -
since said application price was only
approximately \$53,000. As hereinbefore
mentioned, Petitioners purchased said property
in 1978 for \$100,000, then they remodeled, added



another building, a western facade, etc. which said improvements commanded an appraisal in 1981 of \$450,000.

Said property was sold by Order of Judge Brooks. Petitioners objection was not entered into the record. Petitioners filed an appeal to the United States Court of Appeals. Said appeal was sent to the United States District Court and Judge Jim Carrigan.

The United States District Court denied Petitioners appeal because of Judge Brooks September 20, 1990 Order denying Petitioners Designation Of Record transcript until Petitioners paid in full a transcript fee for the hearing of April 27, 1990. But, it was learned, that no hearing was held on April 27, 1990, since Judge Brooks was not sitting on said date. Therefore no transcript could be made. Such manipulation to deprive Petitioners of their rights is now under appeal to the Court of



Appeals for the Tenth Circuit.

Consistent with the foregoing activities, notwithstanding of Wabeke's seizure of the Investors mining bond in the amount of \$31,554 and the seizure and sale for \$41,000 of investors mining equipment valued at \$330,000, Wabeke, in September 1990 and in violation of 11 USC 362, 11 USC 363(d), and 11 USC 363(f), did, without a search warrant or court order or other authorization, in violation of 18 USC 3109 [Appendix "F-2"] and Fourth Amendment to the United States Constitution [Appendix "H"], break into the Petitioners home used by virtue of agreement with creditor Frontier Airlines Federal Credit Union, who had obtained a relief from the automatic stay on September 5, 1989, and which said relief from stay "terminated" the control of the Bankruptcy Court over said property. After breaking into Petitioners' home, Wabeke and Petitioners' long standing adversary,

William Sanders of Centennial, Wyoming, proceeded to change the locks on the premises, posted signs stating "U. S. Property - No Trespassing", placed locks on gates on property owned by Petitioners two brothers, thus depriving them access to their property - their property never being under control of the bankruptcy court.

On March 20, 1991 it was determined that Wabeke's acts did not have the force of law. On March 20, 1991, Petitioners re-established their rights and presence in their home after written notification to Wabeke and personal visit to the Sheriff of Albany County, Wyoming. Upon re-establishing their presence in their home, it was discovered that Wabeke and/or his agent Sanders, among other things, (1) had turned the heat off causing canned food to freeze and explode over two rooms and water systems to freeze and rupture, had disconnected the food

freezers causing the food to spoil; (2) had seized certain personal and private papers; (3) had taken certain private possessions belonging to Petitioners and other members of Petitioners' family. Further, Wabeke currently is interfering with negotiations by Ron W. Gregory, Jr. to purchase said property from said creditor Bellico Credit Union, successor to Frontier Airlines Federal Credit Union and is demanding \$5,000 to 'release' said property from "bankruptcy control". In addition, Wabeke's agent Sanders, contrary to the Code, has made an offer to purchase said property from Bellico through a 'strawman'.

To act to protect their rights and property, Petitioners have been required to file motions in the Bankruptcy Court to remove Wabeke as trustee; to transfer case to Wyoming; to disqualify judge for prejudice and bias; and in the Court of Appeals for the Tenth Circuit, to

appeal from denials by United States District Court of appeal from said April 27, 1990 sale of commercial property and deprivation of action against hereinbefore mentioned federal judges and Wabeke. All were denied.

BASIC POINTS:

1. On February 26, 1988 Petitioners were absolutely ready to commence mining operations.

2. The testimony before the Bankruptcy Court was that the operation was ready and the following had been obtained:

- a. all necessary equipment;
- b. all mining permits;
- c. the Minority Business Enterprise certificate;
- d. all augmentation water;
- e. pre-mining preparations were under construction or completed;
- f. commitments from two companies for material orders (valued from \$700,000 to

\$1,200,000 - depending on type of aggregate);

g. numerous requests to bid on forthcoming projects.

There was only one active entity (Frontier) and one passive entity (Grange) contradicting, objecting and opposing the reorganization plan/confirmation, coincidentally and strangely, with one 'creditor' voting against Confirmation - first and former counsel, Rubner and Kutner, P.C.. Frontier coveted Petitioners land, engaged in fraud, antitrust [Appendix "E"], and breach of contract activities [Appendix "O"] to prevent the start-up of the mining operation through defeat of confirmation. Frontier presented no testimony, no witnesses nor evidence in opposition to the plan. The only testimony was by Frontier counsel, in the statement - "they can't do it".

As hereinbefore described, Bankruptcy Judge Matheson was prejudiced against Petitioners and

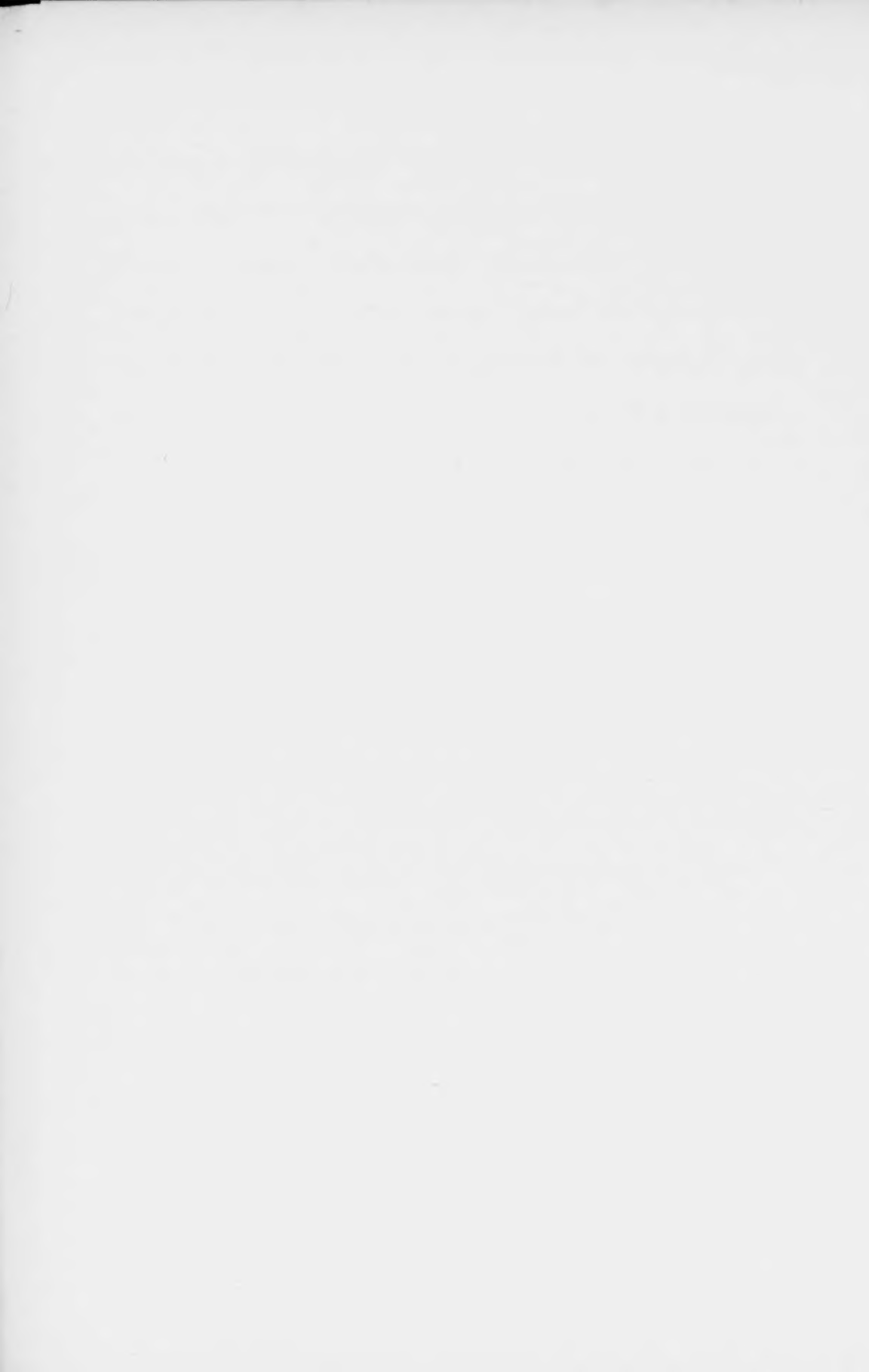
biased for Frontier. The prevailing attitude toward debtors, and rulings are highlighted by the judges attitudes that 'debtors are all liars'. Petitioners, although believing in the Laws and justice of the courts, never had a chance from the day the Petition was filed. Petitioners devoted their life savings and labors, the money and faith of investors, in a cause destined to be defeated by prejudice and bias within the judicial district of Colorado. A chapter 11 debtor has less than 1% chance to reorganize in the District of Colorado.

Petitioners submit that they performed only according to the Code, performed as instructed by the Code, and according to the laws permitting defense of their property and rights. Legal and professional fees of \$90,000 were incurred by Debtors who believed in the intent of the Code and in the integrity of the courts. Petitioners ask why the Courts refused to

enforce the provisions of the court-approved Settlement Agreement, and particularly, where Petitioners were to be permitted to buy 17 acres and improvements on the Boulder County Property upon payment to Frontier of \$100,000. Frontier accepted and kept the first \$50,000 and refused to accept the 'second' \$50,000. Petitioners ask why they owed Frontier anything since there was no value received for the value as given.

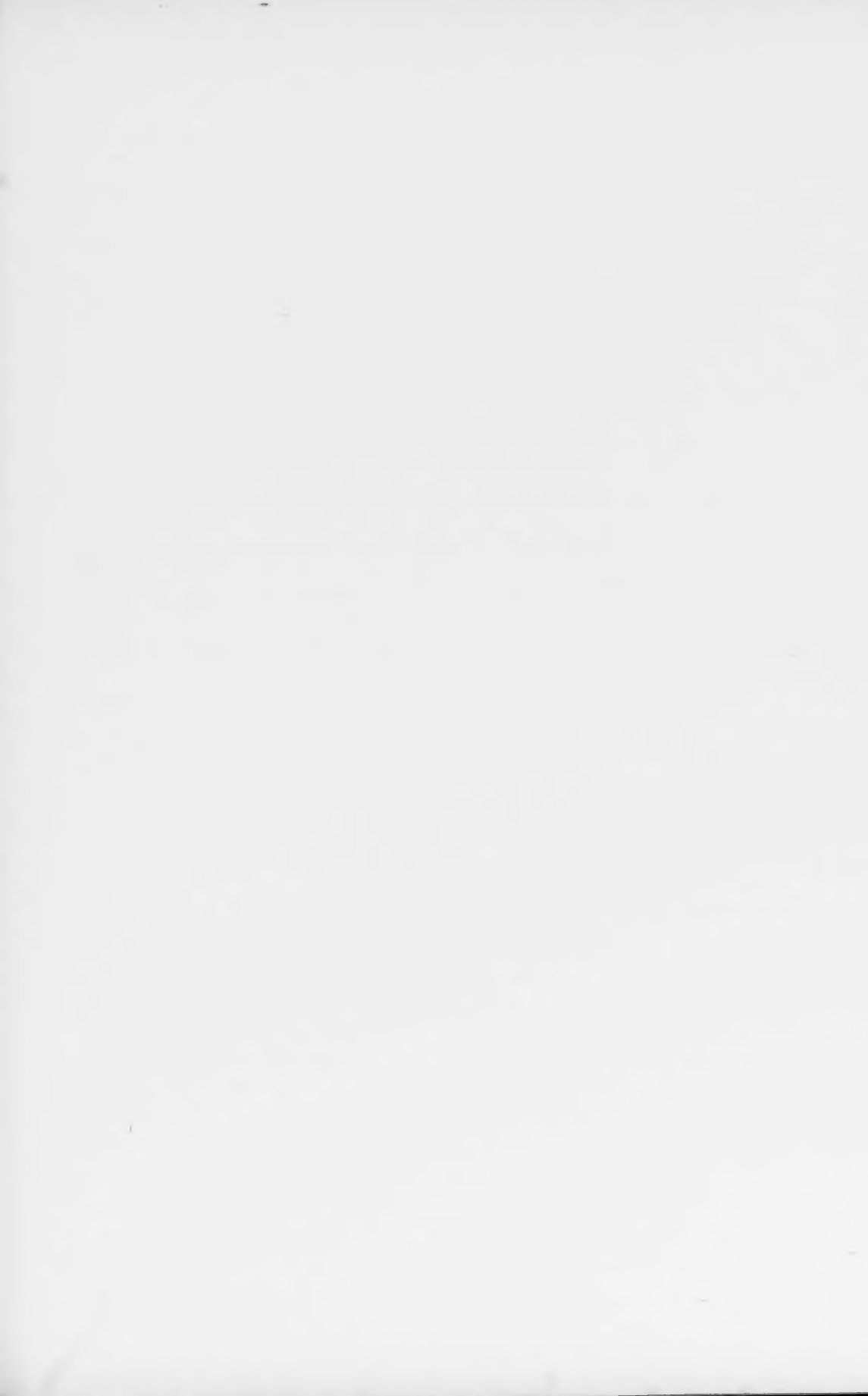
Title 11 of the United States Code is not being administered according to the word and intent of Congress in the District of Colorado.

Petitioners, when filing their Chapter 11 Petition, had broken no laws and faithfully followed the instructions of counsel and the court. Said act of filing said petition, and subsequent thereto, resulted in their being made 'prisoners' of the Code, who were then subjected to deprivation of rights, property and justice, and who were plunged into a nightmare



of judicial horror, humiliation and punishment rightfully characterized and prohibited by the Eighth Amendment to the United States Constitution [Appendix "K"]. Petitioners filed Chapter 11 Petition simply to be accorded the right to reorganize and the right to pay their just debts to their creditors. Petitioners did not seek a discharge of any just debt. The Disclosure Statement and Reorganization Plan clearly stated that all creditors were to receive 100 % of their claim, plus interest.

Granted, the courts have entertained Petitioners motions and efforts, but said access to the courts were, and are, more fittingly described as a sham. A supporting statement emanated from the United States Trustee's office to the effect that 'Petitioners could file their motions, but the judges in the District of Colorado were not going to grant them any relief'.



This Court should grant certiorari here to explicitly rule that Title 11 of the United States Code was not properly implemented in this case, nor is it being properly implemented in other cases within the District of Colorado, and said Code could also be improperly applied in other districts throughout the United States. Further, the prevailing prejudice of the courts in the District of Colorado should be examined to resolve the conflict between the intent of Title 11, the judicial application thereto, and the deprivations of right.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgments and opinions of the courts in the District of Colorado and the judgment and opinion of the Court of Appeals for the Tenth Circuit in this matter, together with any other relief as this Honorable Court deems just.

Dated: April 25, 1991.



Respectfully submitted,

Ronald W. Gregory

Ronald W. Gregory, pro se

Dorothy L. Gregory

Dorothy L. Gregory, pro se

Mailing Address:

c/o J. Bayne

P.O. Box 29773

Thornton, CO 80229-0773



AFFIDAVIT OF SERVICE

STATE OF COLORADO)
)ss
COUNTY OF JEFFERSON)

I hereby certify that, pursuant to Rule 29.3., I served one copy of the foregoing PETITION FOR WRIT OF CERTIORARI on each of the parties herein, by depositing in the United States mail, certified mail, return receipt, or by delivering the copy personally, to the following:

Frontier Materials, Inc.	Grange Mutual Life Co.
ATTN: Henry Braly	c/o Peter McFarlane
Highway 52	4338 David Crum Lane
Erie, CO 80516	Lakeland, FL 33813

Ross J. Wabeke	United States Trustee
325 East 7th Street	1845 Sherman #303
Loveland, CO 80537	Denver, CO 80203

E.H.M.G. Consultants
Fred Paoli
535 16th Street #820
Denver, CO 80202

All known parties required to be served have been served.

Ronald W. Gregory

Subscribed and sworn to before me on April _____, 1991.

Notary Public
My Commission Expires _____, 19____.

91-333

Supreme Court, U.S.
FILED

AUG 26 1991

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____, 1991

RONALD W. GREGORY and DOROTHY L. GREGORY,

Petitioners,

vs.

FRONTIER MATERIALS, INC.; U. S. TRUSTEE;
ST. VRAIN LEFT HAND WATER CONSERVANCY
DISTRICT; FRONTIER AIRLINES FEDERAL CREDIT
UNION; FIRST FEDERAL SAVINGS BANK OF
OKLAHOMA; GRANGE MUTUAL LIFE CO.; BOULDER
COUNTY, COLORADO; E.H.M.G. CONSULTANTS;
ROSS J. WABEKE, Interim Trustee of Estate,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronald W. Gregory
Dorothy L. Gregory
Pro Se Dated: April 25, 1991
c/o J. Bayne
P.O. Box 29773
Thornton, CO 80229-0773

APPENDIX A
Filed: August 29, 1990

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: RONALD W. GREGORY and)
DOROTHY L. GREGORY,)
)
Debtors,)
)
_____)
RONALD W. GREGORY; DOROTHY)
L. GREGORY, Appellants,)
) No.89-1264
v.)
FRONTIER MATERIALS, INC.; U.S.)
TRUSTEE; ST.VRAIN LEFT HAND)
WATER CONSERVANCY DISTRICT;)
FRONTIER AIRLINES FEDERAL)
CREDIT UNION; FIRST FEDERAL)
SAVINGS BANK OF OKLAHOMA;)
GRANGE MUTUAL LIFE CO.;)
BOULDER COUNTY; E.H.M.G.)
CONSULTANTS, Appellees.)

In re: RONALD W. GREGORY and)
DOROTHY L. GREGORY, Debtors.)
)
_____)
RONALD W. GREGORY; DOROTHY)
L. GREGORY, Appellants,)
v.) No.89-1265
U.S. TRUSTEE; ROSS J. WABEKE,)
Trustee of Estate; FRONTIER)
AIRLINES FEDERAL CREDIT UNION;)
FRONTIER MATERIALS, INC.,)
Appellees.)

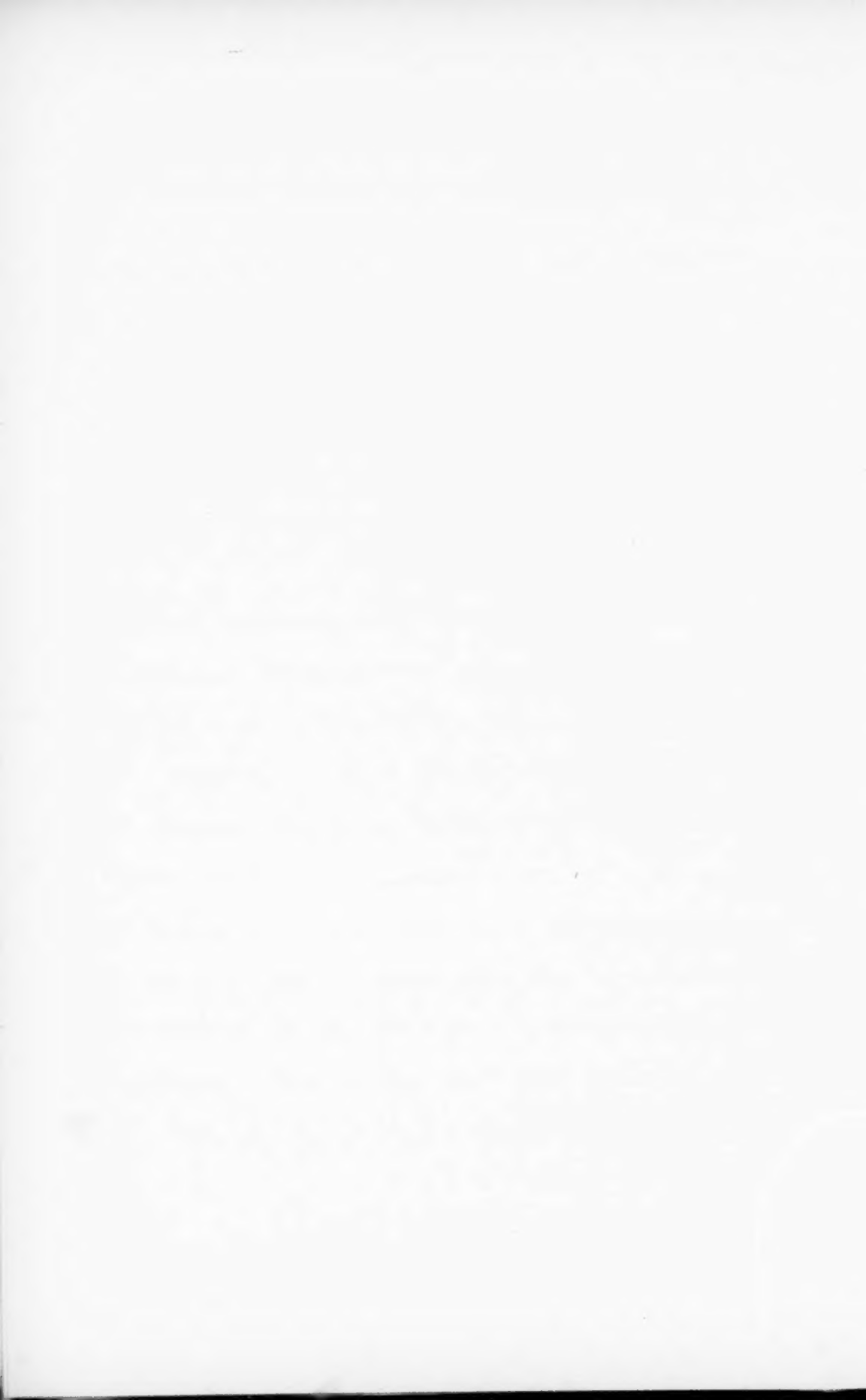


ORDER AND JUDGMENT*

before McKAY, SEYMOUR, and BRORBY, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. See Fed.R.App.P.34; 10th Cir.R.34.1.9. The cases are therefore ordered submitted without oral argument.

The judgment of the United States District Court for the District of Colorado, entered on July 31, 1989, which affirmed certain orders of the bankruptcy court, is AFFIRMED for substantially the reasons set forth therein. The issues raised by debtors in their briefs regarding breach of a settlement agreement and violations of constitutional rights during the bankruptcy court proceedings are not before this court because they were not properly argued to the bankruptcy court.



ENTERED FOR THE COURT
PER CURIAM

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir.R.36.3.



APPENDIX B
Filed: July 31, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 88-F-428
Bankr. No. 86 B 0476 G

In re: RONALD W. GREGORY and DOROTHY L. GREGORY,
Debtors.

RONALD W. GREGORY and DOROTHY L. GREGORY,
Appellants,

vs.

FRONTIER MATERIALS, INC., UNITED STATES TRUSTEE,
ST. VRAIN LEFT HAND WATER CONSERVANCY DISTRICT,
FRONTIER AIRLINES FEDERAL CREDIT UNION, FIRST
FEDERAL SAVINGS BANK OF OKLAHOMA, GRANGE MUTUAL
LIFE COMPANY, BOULDER COUNTY and E.H.M.G.
CONSULTANTS,

Appellees.

Case No. 89-F-148
Bankr. No. 86 B 0476 A

In re: RONALD W. GREGORY and DOROTHY L. GREGORY,
Debtors.

RONALD W. GREGORY and DOROTHY L. GREGORY,

Appellants,

vs.

UNITED STATES TRUSTEE, ROSS J. WABEKE, Trustee
of Estate, FRONTIER AIRLINES FEDERAL CREDIT
UNION, FRONTIER MATERIALS, INC.,

Appellees.

MEMORANDUM OPINION AND ORDER

These matters come before the court on



appeal from the United States Bankruptcy Court. Debtors appeal the March 2, 1988 order of the Bankruptcy Court converting debtors' Chapter 11 case to a Chapter-7 case, the December 14, 1988 order approving the sale of property of the estate, and the January 13, 1989 order denying debtors' motion to transfer proceedings. Jurisdiction is based on 28 U.S.C. 158. For the reasons stated below, the decisions of the United States Bankruptcy Court are affirmed.

Debtor contends that the bankruptcy court should have recused itself because of personal bias and prejudice under 28 U.S.C. 144 or 28 U.S.C. 455. The test to be applied is whether the circumstances are such that the judge's impartiality might reasonably be questioned. United States v. Ritter, 540 F.2d 45 462, (10th Cir. 1975) cert.den. 429 U.S. 1041 (1976). The facts must be evaluated from the viewpoint of a reasonable, objective observer. Bell v.

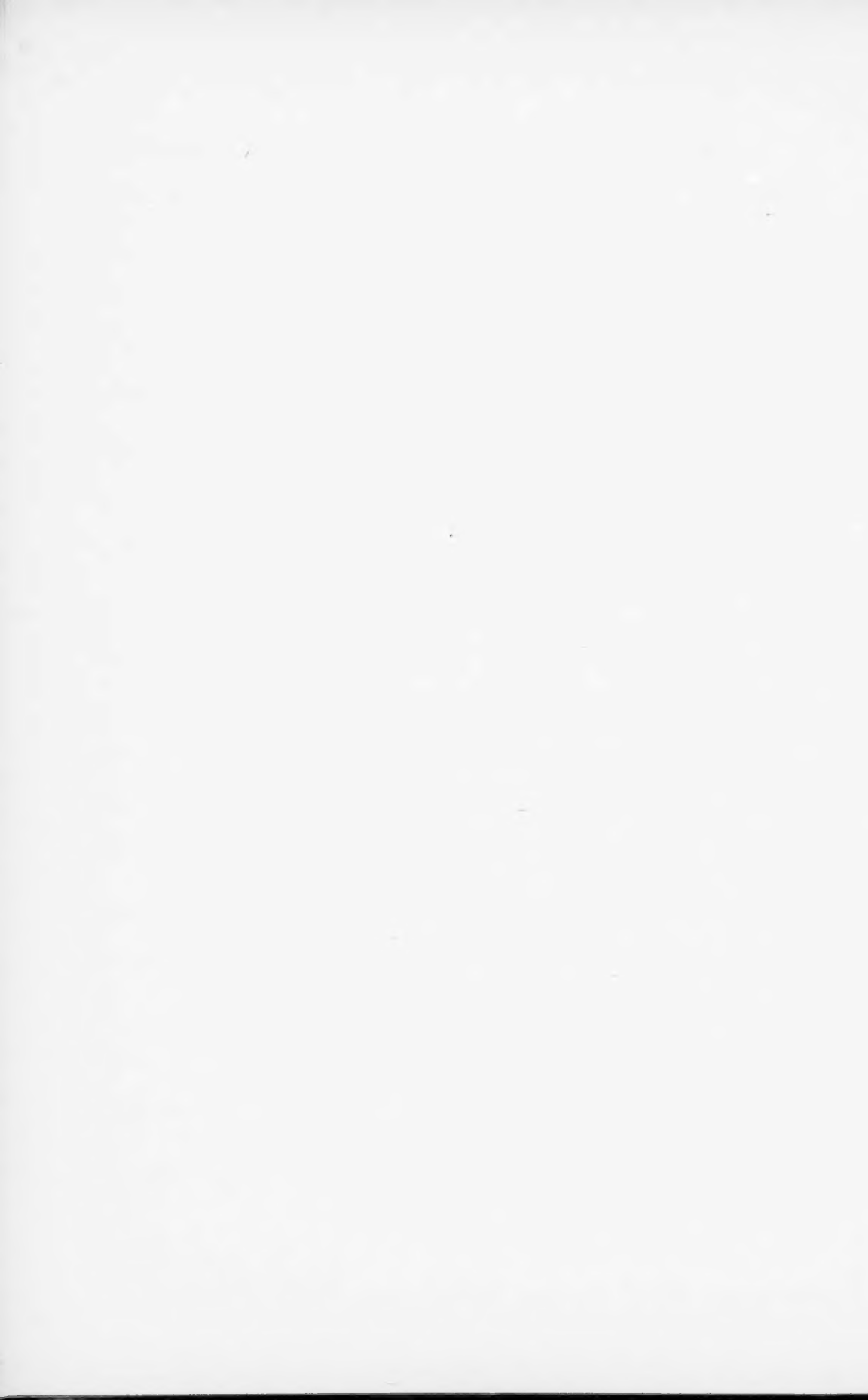
Chandler, 569 F.2d 556, 559 (10th Cir. 1977); United States v. Gigax, 605 F.2d 507, 511 (10th Cir. (1979)). Disqualification should not be based on tenuous speculation; if it were, litigants would have veto power over the assignment of judges. Laxalt v. McClatchy, 602 F. Supp. 214, 217-18 (D. Nev. 1985), citing In re United States, 666 F.2d 690, 695 (1st Cir. 1981).

In arguing that the bankruptcy court was biased against them, debtors submit copies of notes, which debtors contend are copies of the Bankruptcy Judge's notes during the hearing. Despite the fact that these notes are not part of the record, this court has examined them and finds that noting therein establishes bias or prejudice, including the listing of Mr Gregory's employment history. Instead, the notes reflect a careful consideration of the evidence presented at the hearing.

Debtors also contend that certain exhibits which were excluded as hearsay should have been admitted. Debtors point to no hearsay exception, or reason why the exhibits were not hearsay, to justify their admission into evidence. Nor did debtors make any such argument to the Bankruptcy Court. Finally, because these exhibits are not designated as part of the record, this court is unable to construct debtors' hearsay argument for them.

Debtors contends that the Bankruptcy Court erred by refusing to continue the hearing, to provide debtors with additional time to secure the presence of an expert witness. The trial court is vested with control over its own docket, and whether or not to grant continuances are within the sound discretion of the trial court.

Debtors contend that the Bankruptcy Court improperly converted their Chapter 11 case to a



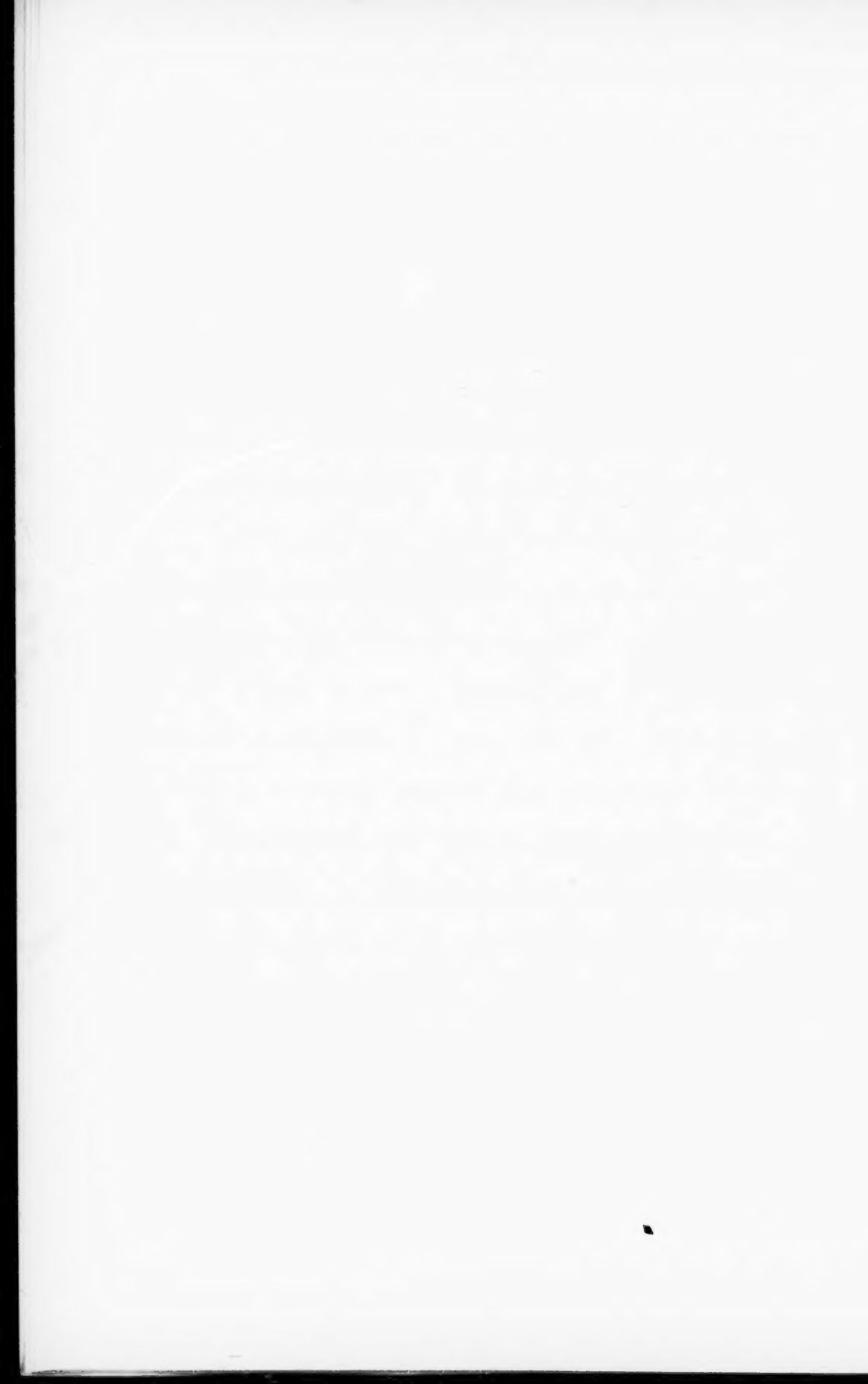
Chapter 7 case. The Bankruptcy Court may issue necessary orders on its own motion. 11 U.S.C. 105(a). A Chapter 11 case may be converted to a Chapter 7 case if the court finds there is a diminution of the estate and a lack of reasonable likelihood of rehabilitation. 11 U.S.C. 1112(b)(1). That finding is one of fact on a core proceeding, and is subject to review only on a clearly erroneous standard. 28 U.S.C. 158. The evidence before the Bankruptcy Court supports its conclusion that the debtor's rehabilitation was unlikely, and that the estate was losing value, to the detriment of the creditors. Further, debtors' attorney consented to conversion after debtors' plan was not confirmed.

Further, insofar as the debtors' appeal challenges the sale of debtors' property, debtors' appeal is moot. 11 U.S.C. 363(m) provides that the appeal of a court order



approving a sale of the debtors' property can not effect the validity of a sale to a good faith purchaser unless the sale is stayed pending appeal. If an appellant fails to obtain a stay, the appeal must be dismissed as moot. In re Vetter Corp., 724 F.2d 52, 55-56 (7th Cir. 1983) (citing In re Ball Air Associates, Ltd., 706 F.2d 301, 304-05 (10th Cir. 1983) (interpreting former Fed.R. Bank.P. 805).

Debtors contend that the instant appeal falls within the exception to the stay requirement applicable to bad faith transactions. It is well established that a district court may not review issues not raised in the Bankruptcy Court or designated for appeal. MortgageAmerica Corp. v. Bach Halsey Stuart Shields, Inc., 789 F.2d 1146, 1151 (5th Cir. 1986); Garfinkle v. Levin, 460 F.Supp. 670, 672 (S.D.N.Y. 1978); see also Southwest Forest Indus., Inc. v. Sutton, 1989 U.S. App. LEXIS



1515 (10th Cir. Feb 10, 1989) (appeal limited to issues noted); Associated Press v. Cook, 513 F.2d 1300 (10th Cir. 1975)(appeal limited to issues raised at trial). Here, appellants' statement of issues does not raise the issue of bad faith, and the record does not indicate that appellants litigated the issue of bad faith below.

Appellants' remaining contentions on appeal are without merit.

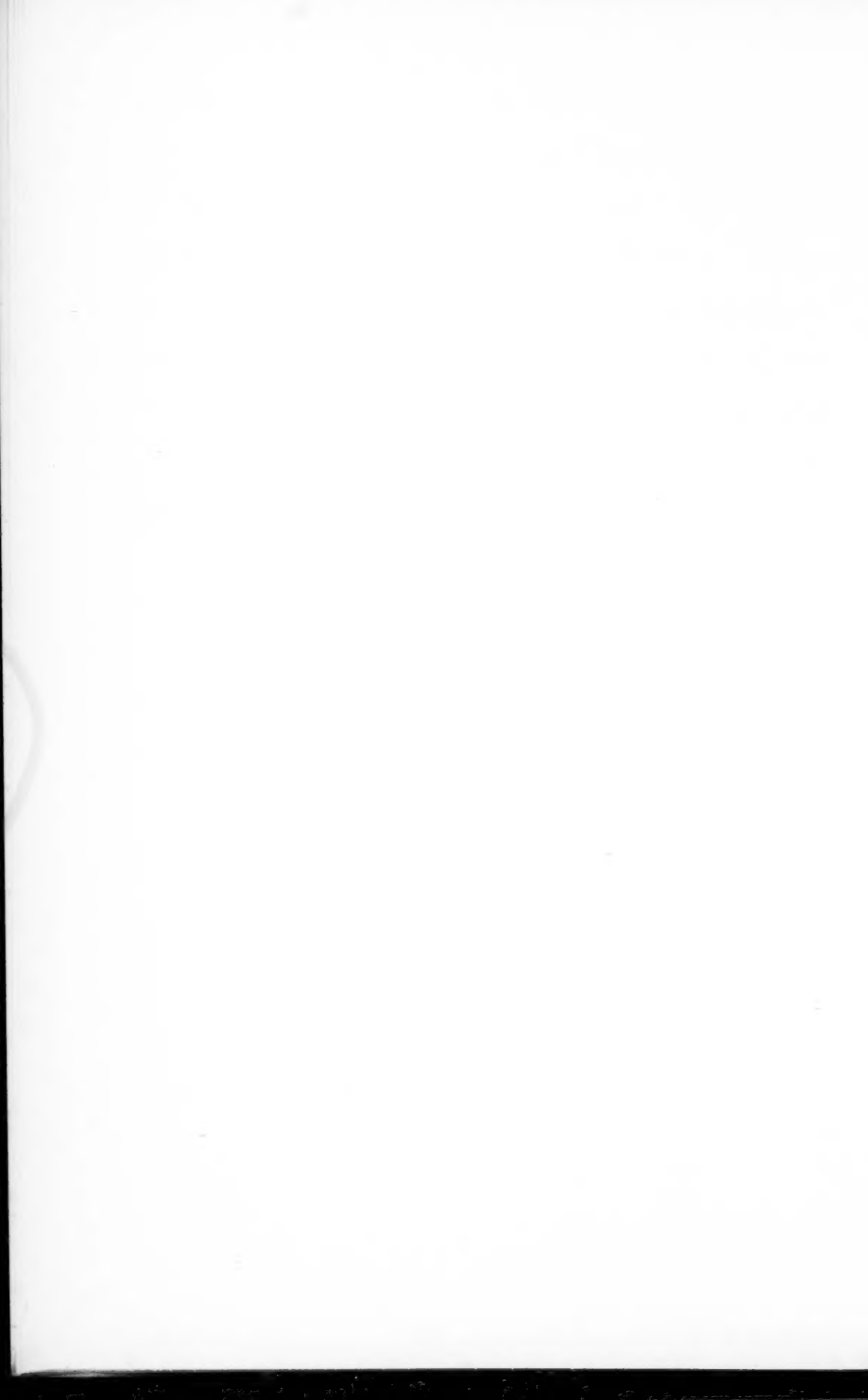
ACCORDINGLY, the decisions of the United States Bankruptcy Court are AFFIRMED.

Done this 31 day of July, 1989 at Denver, Colorado.

By the Court:

SS

Sherman G. Finesilver, Chief Judge
United States District Court



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 88-F-428
Bankruptcy Case No. 86 B 476 G

IN RE: RONALD W. GREGORY and DOROTHY L. GREGORY,
Debtors,

RONALD W. GREGORY and DOROTHY L. GREGORY,
Appellants,

vs.

FRONTIER MATERIALS, INC., UNITED STATES TRUSTEE,
ST. VRAIN LEFT HAND WATER CONSERVANCY DISTRICT,
FRONTIER AIRLINES FEDERAL CREDIT UNION, FIRST
FEDERAL SAVINGS BANK OF OKLAHOMA, GRANGE MUTUAL
LIFE COMPANY, BOULDER COUNTY and E.H.M.G.
CONSULTANTS,

Appellees.

Case No. 89-F-148
Bankr. No. 86 B 0476 A

In re: RONALD W. GREGORY and DOROTHY L. GREGORY,
Debtors.

RONALD W. GREGORY and DOROTHY L. GREGORY,

Appellants,

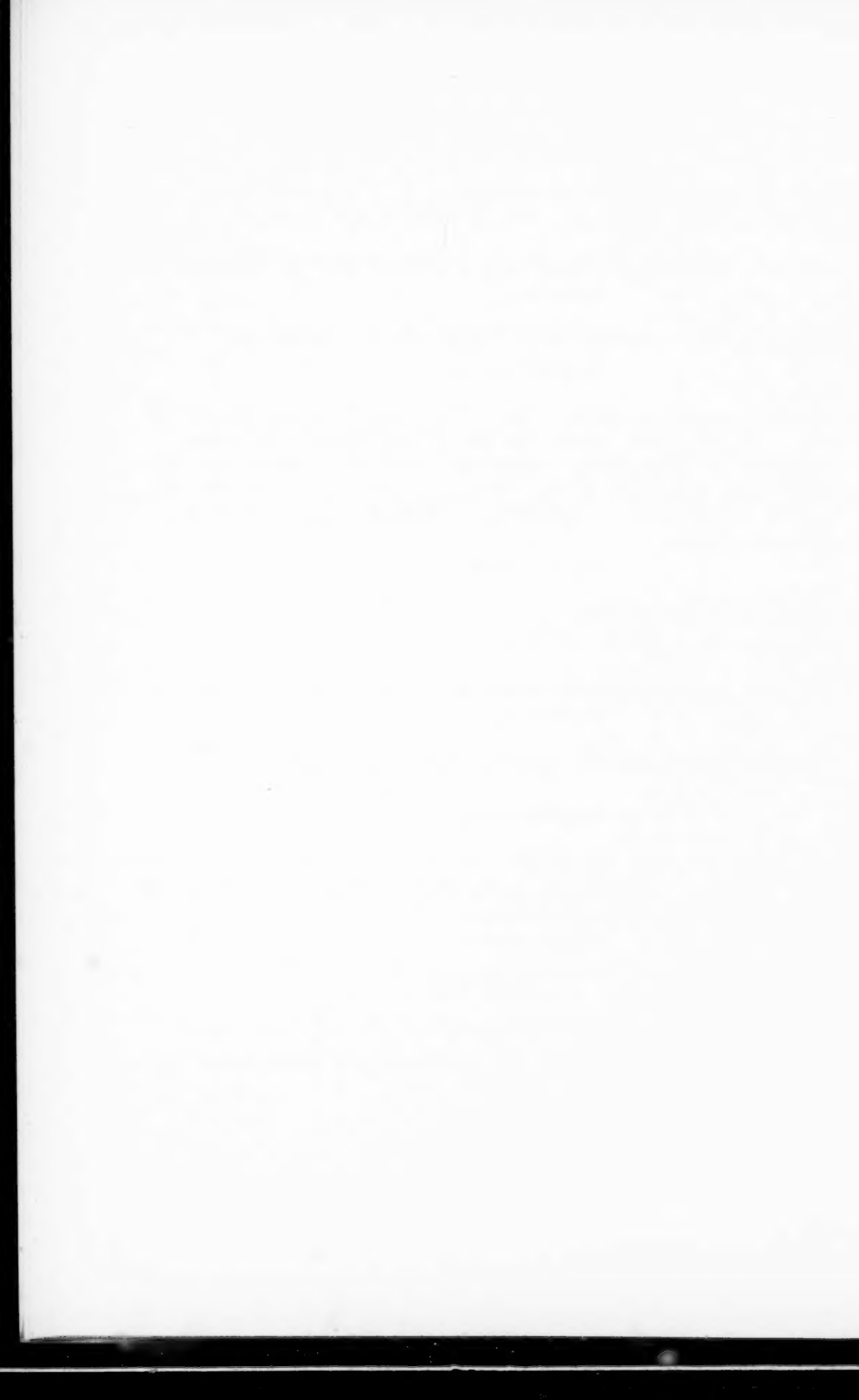
vs.

UNITED STATES TRUSTEE, ROSS J. WABEKE, Trustee
of Estate, FRONTIER AIRLINES FEDERAL CREDIT
UNION, FRONTIER MATERIALS, INC.,

Appellees.

JUDGMENT

PURSUANT TO an in accordance with the



Memorandum Opinion and Order entered July 31, 1989, by the Honorable Sherman G. Finesilver, Chief Judge, it is hereby

ORDERED that the decisions of the United States Bankruptcy Court are AFFIRMED.

DATED at Denver, Colorado, this 31st day of July, 1989.

FOR THE COURT:

JAMES R. MANSPEAKER, CLERK

by: Stephen P. Ehrlich
Chief Deputy Clerk



APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: RONALD W. GREGORY)
In re: DOROTHY L. GREGORY,)
Debtors.)
)
RONALD W. GREGORY; DOROTHY L.)
GREGORY,)
Appellants,)89-1264
v.)89-1265
U. S. TRUSTEE; ROSS J. WABEKE,)
Trustee of the Estate, FRONTIER)
AIRLINES FEDERAL CREDIT UNION;)
GRANGE MUTUAL; FRONTIER MATERIALS,)
INC.)
Appellees.)

ORDER

Filed November 27, 1990

Before HOLLOWAY, Chief Judge, McKAY, LOGAN,
SEYMOUR, MOORE, ANDERSON, TACHA, ???CK, BRORBY,
Circuit Judges.

This matter comes on for consideration of appellants' suggestion for rehearing en banc, which the court treats as a petition for rehearing and suggestion for rehearing en banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that



rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Judge Ebel is recused.

Entered for the Court

33

ROBERT L. HOECKER, Clerk



Title 11

11 USC 362

"(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, ...operates as a stay, applicable to all entities, of --

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or property from the estate or to exercise control over property of the estate;

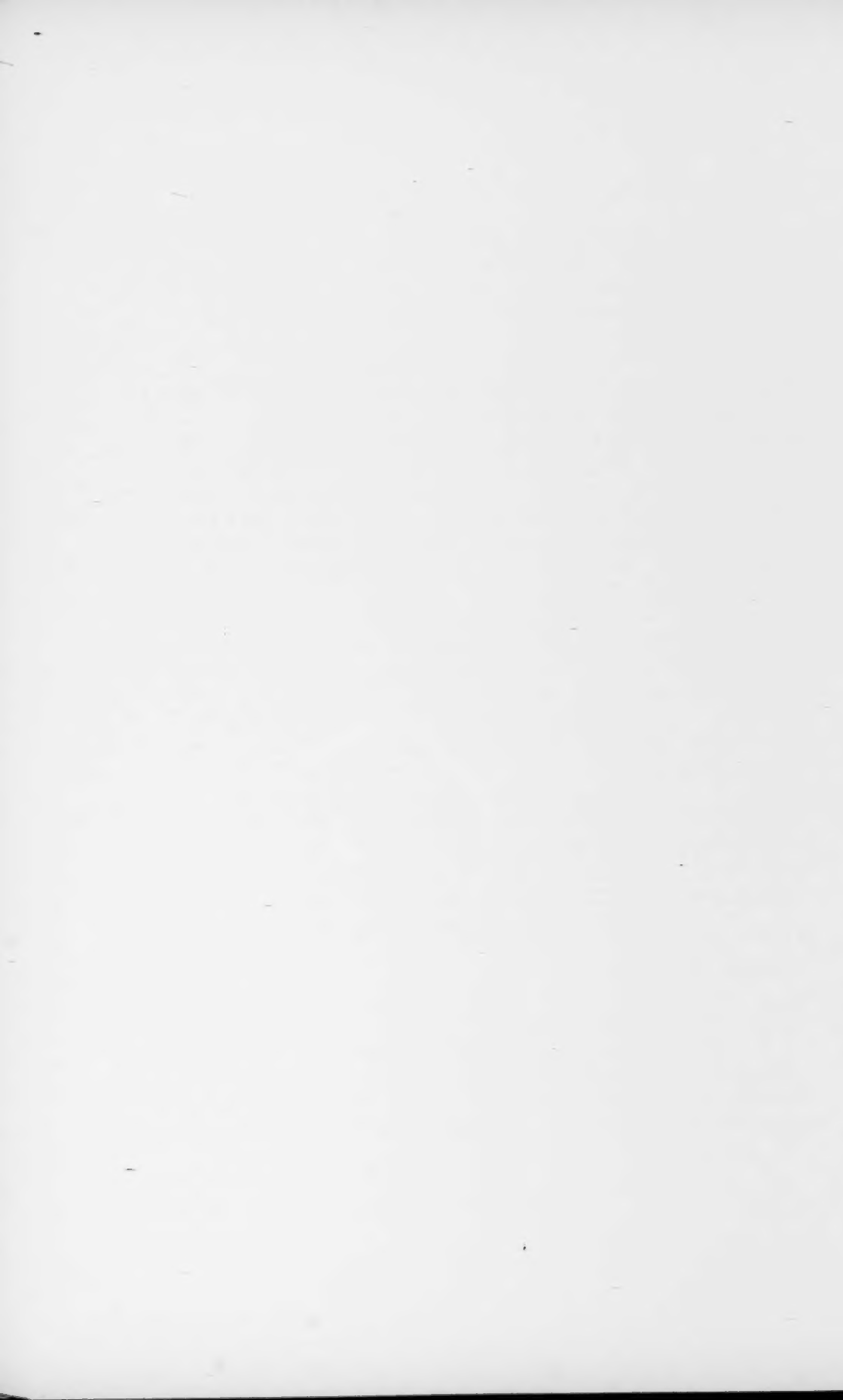
(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;... [Emphasis added]

11 USC 704(7)

"The trustee shall --

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;"



11 USC 1109(b)

"A party in interest, including the debtor, the trustee, a creditor's committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."

APPENDIX "D-2"



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
_____ TERM, 1991

RONALD W. GREGORY and DOROTHY L. GREGORY,

Petitioners,

vs.

FRONTIER MATERIALS, INC.; U. S. TRUSTEE;
ST. VRAIN LEFT HAND WATER CONSERVANCY
DISTRICT; FRONTIER AIRLINES FEDERAL CREDIT
UNION; FIRST FEDERAL SAVINGS BANK OF
OKLAHOMA; GRANGE MUTUAL LIFE CO.; BOULDER
COUNTY, COLORADO; E.H.M.G. CONSULTANTS;
ROSS J. WABEKE, Interim Trustee of Estate,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronald W. Gregory
Dorothy L. Gregory
Pro Se Dated: April 25, 1991
c/o J. Bayne
P.O. Box 29773
Thornton, CO 80229-0773



"Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of the suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only -

(1) whether such person is the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or



otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying litigation or increasing the cost thereof."

Title 18

18 USC 153

"Whoever knowingly and fraudulently appropriates to his own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his charge as a trustee, custodian, marshal, or other officer of the court, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

18 USC 154

"Whoever, being a custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a case under title 11; or

Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so --

Shall be fined not more than \$500, and shall forfeit his office, which shall thereupon become vacant."

18 USC 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws



of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with the intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -

They shall be fined no more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or life.

18 USC 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

* * *

18 USC 245(b)

"Whoever, whether or not acting under the color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with

(2) any person because of his

APPENDIX "F-2"

race, color, religion or national origin and because he is, or has been

(B) participating in or enjoying any benefit, service, privilege program, facility or activity provided or administered by a State or subdivision thereof;

(C) applying for or enjoying employment, or any prerequisite thereof, by any private employer or any agency of any State or subdivision thereof,...; shall be fined not more than \$1,000.00, or imprisoned not more than one year, or both;"

18 USC 1961

"(1) "racketeering activity" means...(D) any offence involving fraud connected with a case under title 11..."

18 USC 3057

(a) "Any judge...having reasonable grounds for believing that any violation under...other laws of the United States relating to insolvent debtors...or reorganization plans has been committed ...shall report to the...United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed..."

"(b) "The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, ..."

APPENDIX "F-3"

18 USC 3109

"The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

APPENDIX "F-4"

**AMENDMENT I TO THE UNITED STATES
CONSTITUTION**

**Congress shall make no law respecting
an establishment of religion, or
prohibiting the free exercise thereof; or
abridging the freedom of speech, or of the
press; or the right of the people
peaceable to assemble, and petition the
Government for a redress of grievances.**

APPENDIX "G"



**AMENDMENT IV TO THE UNITED STATES
CONSTITUTION**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX "H"

AMENDMENT V TO THE UNITED STATES
CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.



AMENDMENT VII TO THE UNITED STATES
CONSTITUTION

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.



AMENDMENT VIII TO THE UNITED STATES
CONSTITUTION

Excessive bail shall not be required,
nor excessive fines imposed, nor cruel and
unusual punishments inflicted.

APPENDIX "K"



AMENDMENT XIV TO THE UNITED STATES
CONSTITUTION

Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



APPENDIX M

August 21, 1986

Re: Frontier Materials/Gregory - Counteroffer of Settlement

Gentlemen:

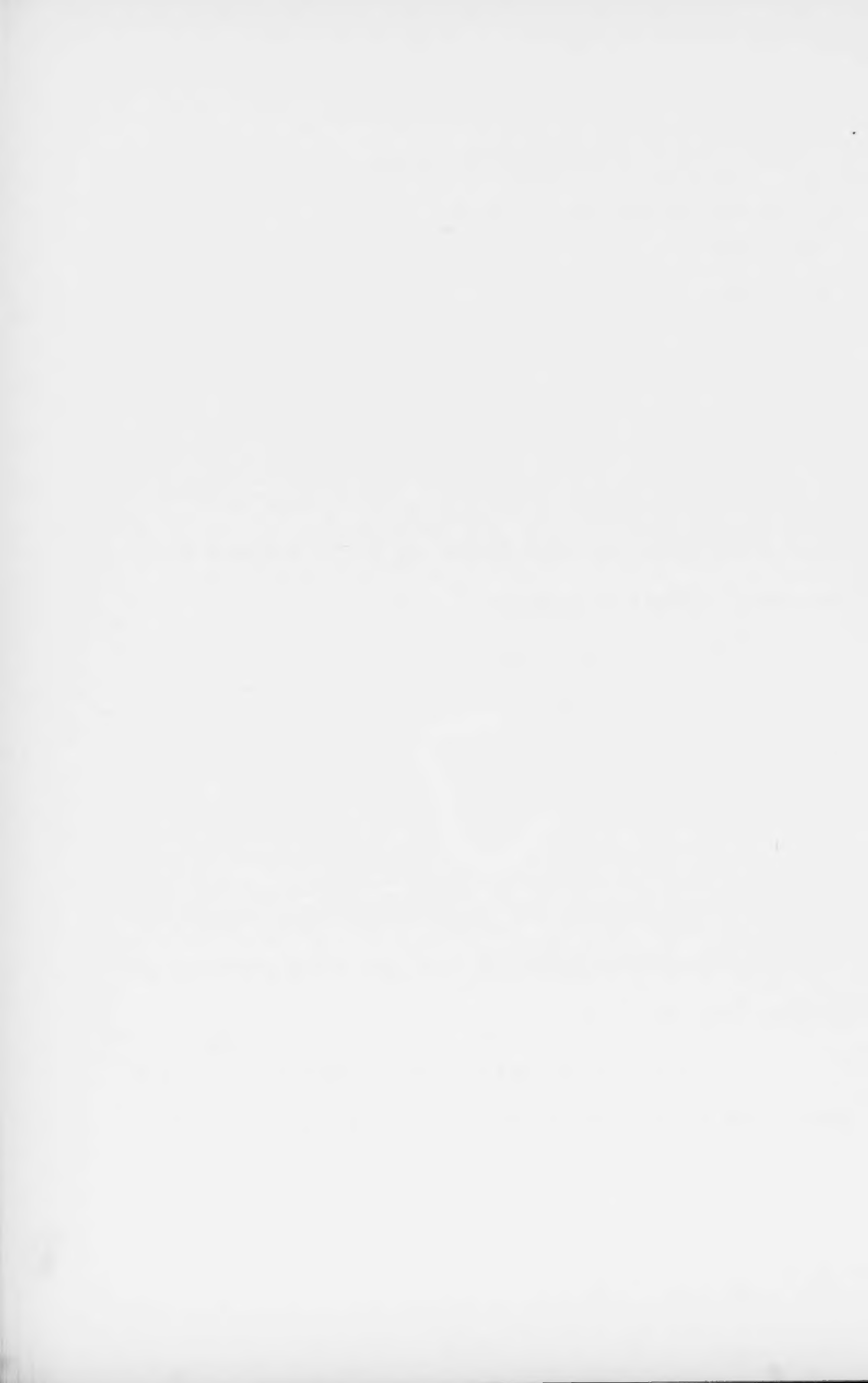
In accordance with our face-to-face settlement discussions of August 14, 1986, I have prepared the following redraft of our earlier settlement proposal. I believe that you will find the revised terms to be in accord with our oral understandings:

1. Gregory will pay to Frontier the sum of \$215,000.00 over a five year period with the payments made as follows:

a. \$50,000.00 within the sooner of the following:

(i.) ten(10) days after the issuance to Gregory of the permits for the Gregory gravel operation; or

(ii.) 120 days after approval of the Settlement Agreement by the Bankruptcy Court,



provided that Frontier has not delayed hereunder in meeting its obligations to transfer permits to Gregory, such period to be extended equivalent to any period of delay in excess of that provided in Section 9 below.

b. \$50,000.00 within one year following the first payment;

c. \$25,000.00 within the year following the second payment;

d. \$25,000.00 within the year following the third payment;

e. \$25,000.00 within the year following the fourth payment;

f. A balloon payment of all principal and interest which remain due on or before the fifth anniversary date of the first payment.

2. The portion of the \$215,000.00 which is paid by deferred payments as described in paragraph 1 shall accrue monthly interest at the prime rate as set by the Colorado National Bank

in Denver, Colorado.

3. Gregory may repay the \$215,000.00 or any portion of said \$215,000.00 with accrued interest at any time without penalty. In the event that Gregory prepays the entire \$215,000.00, Gregory shall be relieved of all obligations to Frontier hereunder save and except the right of first refusal granted below.

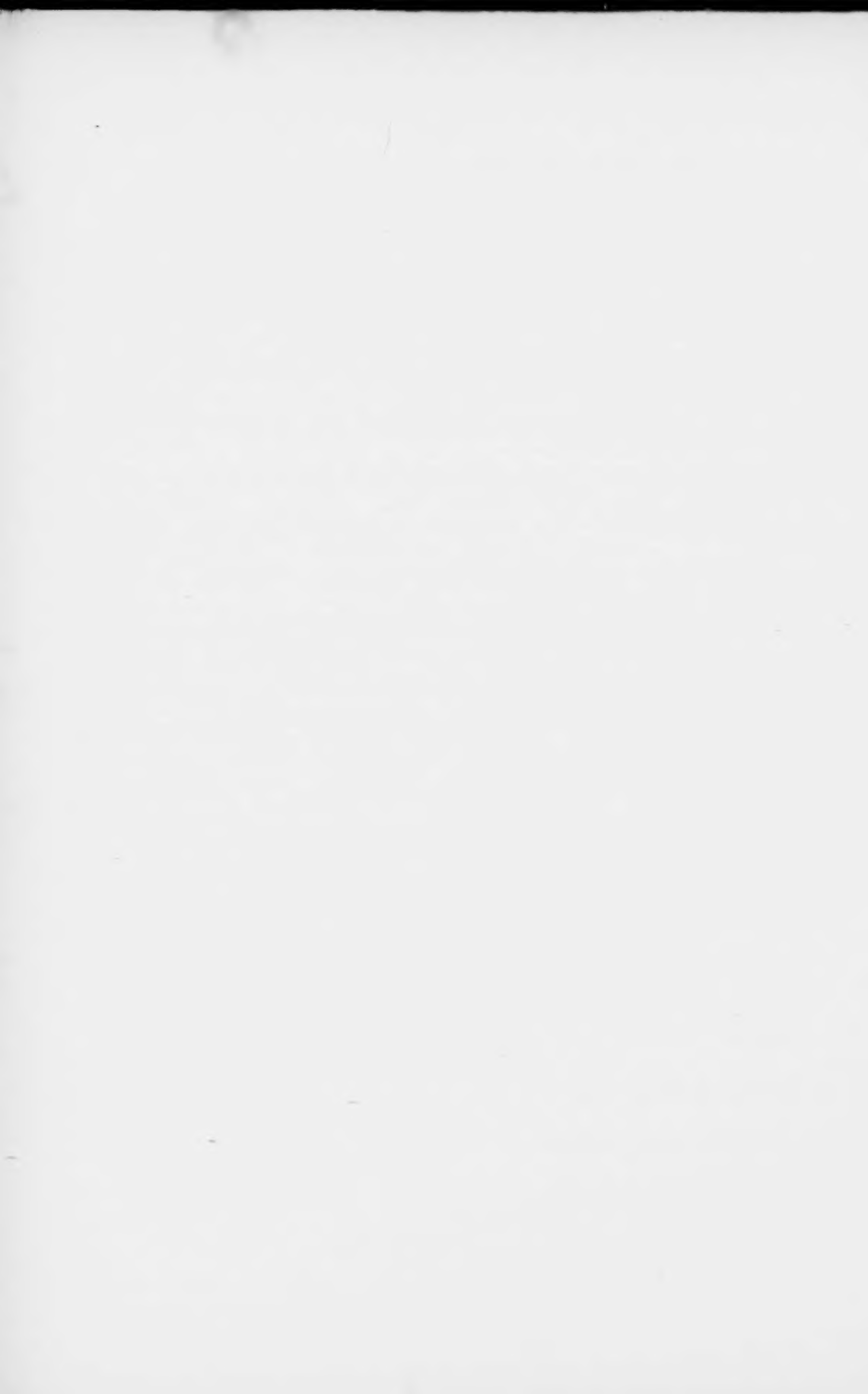
4. The \$215,000.00 due from Gregory to Frontier pursuant to this Settlement shall be secured by a deed of trust which will encumber the subject Gregory sand and gravel in Hygiene, Colorado. The deed of trust will be junior to that lien now held of record by Grange Mutual Life Co.

5. In the event that Gregory defaults under any of the settlement provisions, Frontier shall have the rights enumerated below. "Default" shall be defined as a violation of this agreement which Gregory has failed to cure after

thirty (30) days written notice of the default. The notice shall specify in detail the nature of the default, and shall be effective upon the date placed in the United States mail, postage prepaid, certified, return receipt requested.

a. To foreclose its deed of trust which encumbers the subject property. If Gregory fails to redeem during the period provided by law, the Gregory/Frontier mining lease shall merge with the property title upon the date of issuance of the Public Trustee's Deed, and royalties paid under the lease shall cease on such date; and/or

If Gregory redeems during the period provided by law, The Mining Lease between Frontier and Gregory shall be deemed to be reinstated and in effect, and Frontier may enter the property to commence mining operations pursuant to the terms of the Mining Lease, and Gregory shall own the property free of the deed of trust, but subject to the mining lease.



[The stated intent of the parties is that Gregory shall have "one shot" to mine the property under this stipulation; if Gregory defaults and foreclosure commences, a redemption by Gregory will not re-instate his right to mine.]

b. Frontier may elect to enter the property to commence mining operations pursuant to the Frontier/Gregory Mining Lease of July 1, 1983, which mining lease is agreed by the parties herein, and for the purposes of this settlement only, to be valid and enforceable, with Frontier vested with possessory rights contingent only upon the default of Gregory, and further provided:

(i.) If Frontier elects to commence mining operations after any uncured default:

(1) Gregory shall be relieved of any obligation to pay Frontier any amounts yet unpaid under this agreement.

Any amounts paid to Frontier prior to the exercise of its rights under paragraph 5b. shall be the sole property of Frontier and may not be recovered by Gregory.

(2) If Frontier has initiated foreclosure, but enters the property prior to the expiration provided for by law, the foreclosure proceeding shall be terminated by Frontier, and any certificate of purchase cancelled, and the parties shall revert to their relationship established under this Agreement and the Mining Lease of July 1, 1983.

(3) Except in the issuance of a Public Trustee's deed to Frontier, royalties shall be paid as provided under the mining lease after entry of the subject property by Frontier to commence mining operations.

(4) If Frontier elects to foreclose, but such foreclosure is redeemed by Gregory, Frontier shall have the right to enter

and mine the property pursuant to the terms of the Mining Lease of July 1, 1983, Gregory's property title to be subject to such Mining Lease.

c. In the event Frontier elects to pursue mining operations pursuant to 5b. above according to the terms of the Frontier/Gregory lease, Gregory agrees to execute any documents required by Frontier to obtain a retransfer of the permits and otherwise commence mining operations, such re-transfer to occur within three (3) days after written request by Frontier.

In the event that Frontier exercises its rights under paragraph 5b., Gregory shall abandon all mining operations and vacate the premises except for his home and the adjacent tract as set forth in paragraph 6 below. If Gregory does not so abandon and vacate, Frontier shall be granted relief from stay and



immediately entitled to commence an action to evict Gregory who is deemed to be holding possession of the property for the benefit of Frontier until Frontier is fully paid.

6. Gregory shall remain liable to the first lienholder for all amounts due on his home and a 17 acre tract surrounding the home which shall be retained by Gregory except that upon completion of the first two payments by Gregory under this Agreement, Frontier agrees to be fully liable for any liability to the first lienholder even in the event of a subsequent default by Gregory. In the event of a default by Gregory and if Frontier chooses to foreclose its deed of trust, Gregory shall have the right to obtain from Frontier a deed to the Gregory home and adjacent structures and the 17 acre tract, and to possession thereof, free and clear of all existing liens and encumbrances (being those of the Grange first deed of trust on the

Gregory Tract at the earliest possible date, and until release, to indemnify Gregory in writing against the lien of the first deed of trust.

In the event that Gregory defaults prior to making one or both of the first two payments required herein, and Frontier elects to foreclose its deed of trust, Gregory shall have the ability to take advantage of the hold harmless agreement contained in the previous paragraph by paying to Frontier the defaulted amount (whether \$50,000 or \$100,000, whichever is applicable) prior to the expiration of the six (6) month redemption period provided by law.

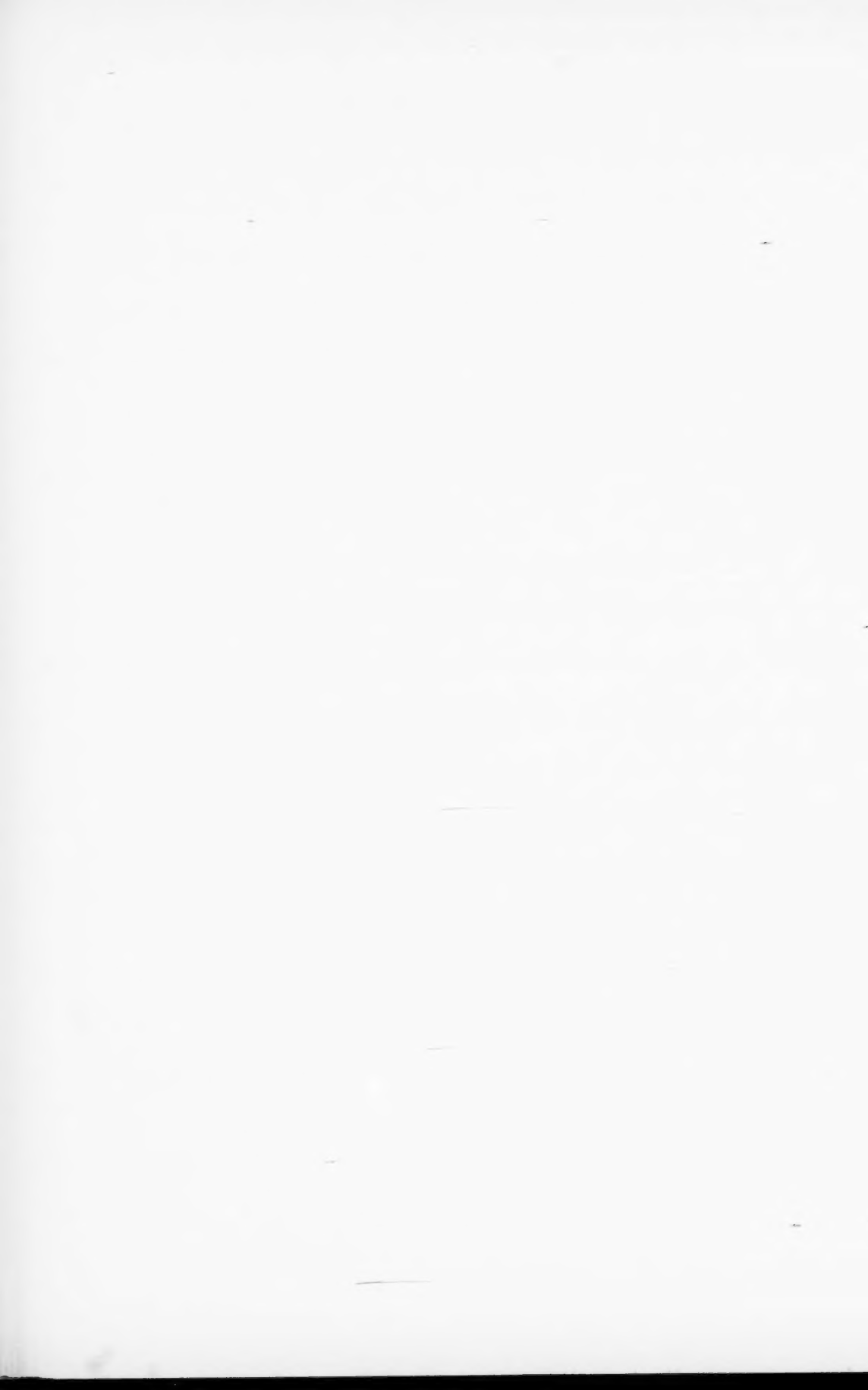
7. In the event that Frontier begins mining operations on the subject property pursuant to this Agreement, the parties further agree that Gregory will not unreasonably restrict or impede Frontier's mining efforts by virtue of his continued interest in and ownership of his home and retained acreage provided that Frontier's



mining activities are in accord with the current approved mining plan.

8. Frontier shall neither interfere with nor impede Gregory's efforts to start up and to pursue mining operations of a sand and gravel mine on his subject property and Frontier shall not interfere with nor impede Gregory's mining operations once the mining operations have been commenced.

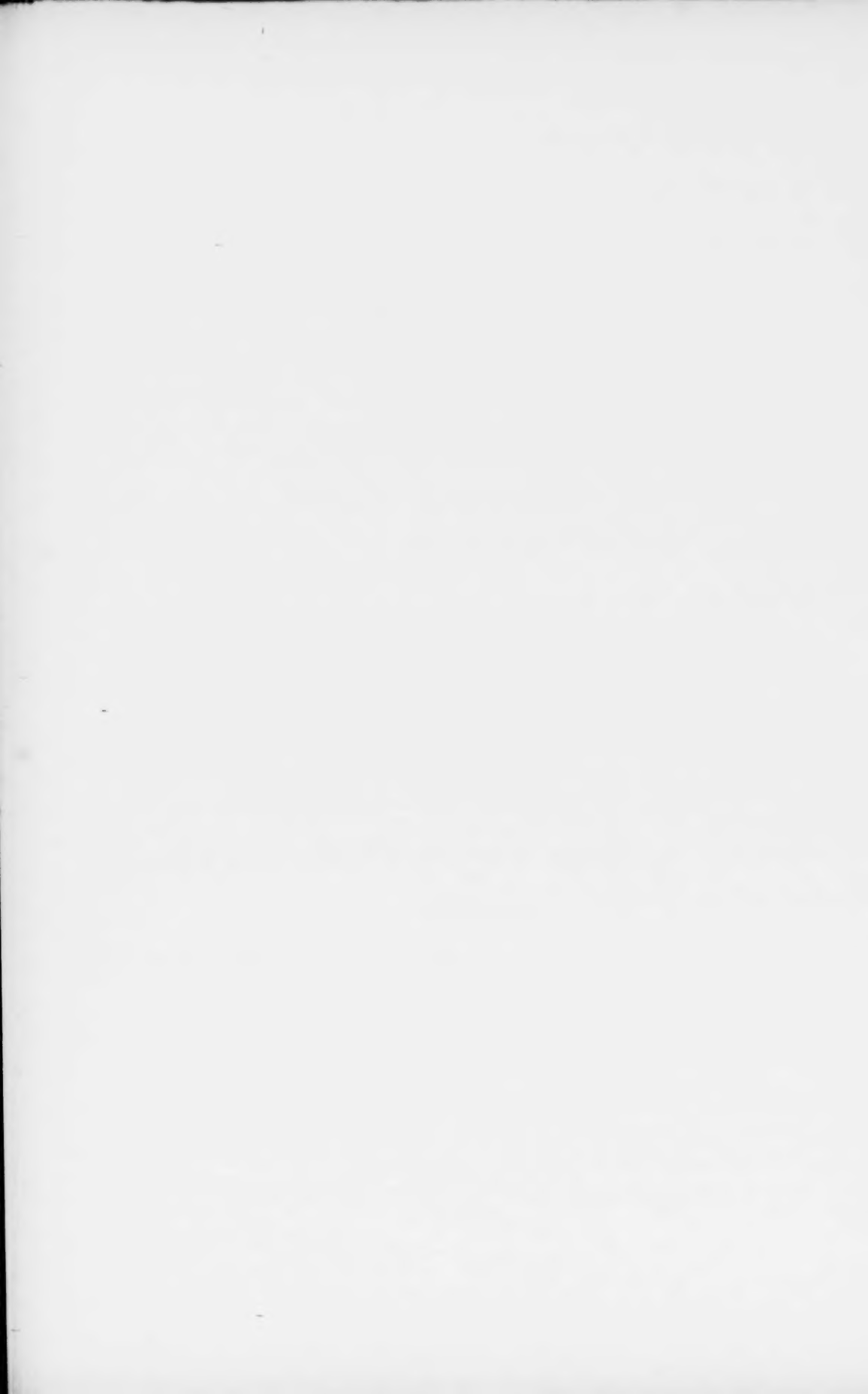
9. Frontier shall make all information in its possession available to Gregory in obtaining permits for commencement of mining operations for the subject property and shall neither interfere with nor impede Gregory's efforts to obtain the necessary permits for the sand and gravel mine including any attempt by Gregory to obtain approval of different access haul routes. Frontier shall comply with Gregory's reasonable requests to sign documents necessary to effect a transfer of any existing permits for the sand



and gravel operation on the Gregory property to Gregory. Frontier shall execute all documents necessary to accomplish transfer of permits, succession of operator or otherwise within three days of the written request of Gregory, including, upon the request of Gregory, any agreements with surrounding landowners.

Frontier states its preference not to assign permits until Gregory obtains the necessary approvals from Boulder County and the Colorado Mined Land Reclamation Board, but agrees to so transfer in the event that Gregory or Gregory's counsel deems transfer necessary for Gregory to obtain the required change of operator approvals from the County, the State, or other affected agencies.

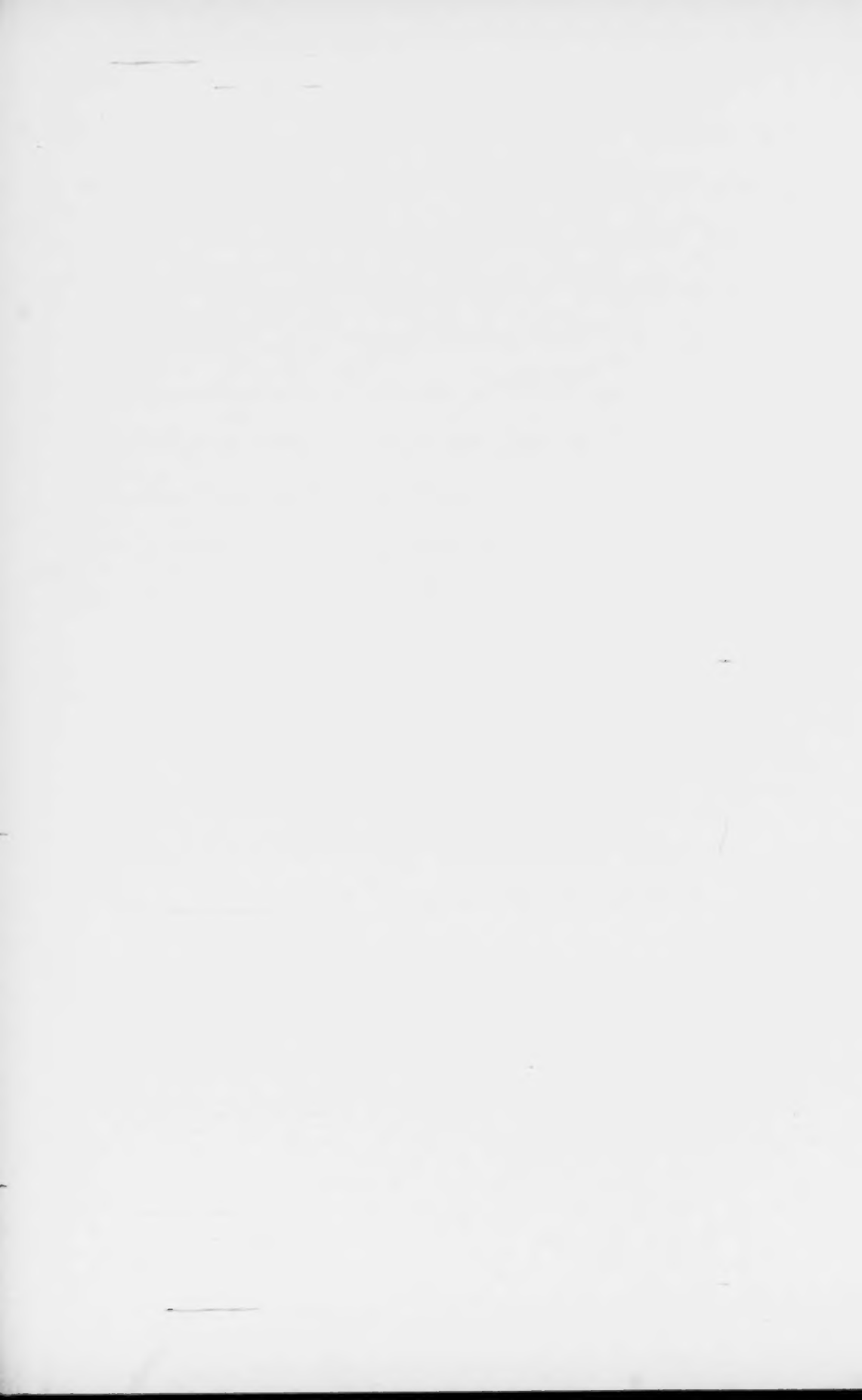
The terms "interference" or "impede" shall included any efforts by Frontier to delay mine startup or operation, to delay acquisition or transfer of permits, to organize opposition to



the mining operation, whether through legal action or through the actions of the officers, agents, employees or persons under the direction of or acting at the request of Frontier.

10. In the event that the Settlement Agreement with Frontier is incorporated into any Chapter 11 Plan proposed by Gregory and no default has occurred thereunder, Frontier agrees that the Settlement Agreement will be deemed to constitute adequate protection of Frontier's interest and claims as lessee and lienholder.

11. Gregory individually, as a general partner in any limited or general partnership, or as majority shareholder in any corporation, is the only entity with the right to conduct sand and gravel mining operations on the subject property for the five-year period following the execution of the Settlement Agreement. Nothing herein shall prevent Gregory from utilizing commercial sub-contractors to perform contract



tasks upon the site, including with specificity the operation of a contract crushing facility. The parties state that it is their intent under this section that Gregory not have the ability to lease or to sublease the Property to a competitor of Frontier during the first two (2) years of this Agreement, and that he be able only to lease, sublease or sell the property subject to Frontier's right of first refusal, as defined below.

a. After two years following the date of the Settlement Agreement, Gregory will have the right to lease or sublease the subject property for sand and gravel mining operations; provided that Frontier has a first right to lease the subject property on the same terms and conditions as any bona fide offer for lease which is received by Gregory.

Gregory shall have the right to sell the property at any time after the date hereof,



subject to Frontier's right of first refusal to purchase. The terms of Frontier's first right of refusal to lease or purchase are as follows:

(i.) If Frontier exercises its option to purchase or lease the property as set forth above, Frontier may deduct from the lease or purchase price that portion of the \$215,000.00 which remains unpaid pursuant to the Settlement.

(ii.) Gregory shall present to Frontier in writing any bona fide offer to lease or purchase which he intends to accept and then Frontier shall have a period of 20 days to notify Gregory in writing of its intent to exercise its Right of First Refusal, with closing to occur within thirty (30) days after notification to Gregory of such exercise. Frontier shall have the right to verify the bona fide nature of any offer and it is agreed between the parties that any offer must pay off Frontier at closing in full under this



Settlement Agreement in order for such offer to be accepted by Gregory. In the event that Frontier does not exercise its Right of First Refusal , Gregory shall be free for a period of ninety (90) days to close with the third party making the offer on the terms and conditions offered by Gregory to Frontier.

(iii.) In the event that Frontier does not exercise its right of first refusal, this Agreement and the Frontier/Gregory lease shall be cancelled at closing, and Frontier shall be paid contemporaneously therewith any amounts due hereunder, with accrued interest, if any. The parties agree to the execution at closing of any documents necessary to accomplish the same.

12. The Settlement Agreement is contingent upon the prior approval of the Settlement Agreement by the Bankruptcy Court in the Gregory bankruptcy case.



13. Frontier shall execute an assignment to Gregory the existing easement agreement between Frontier and Western Paving. This Settlement Agreement shall be contingent upon dismissal of the lawsuit in Division I Water Court upon the terms provided at paragraph 14 below.

14. The Settlement Agreement shall be binding on the parties' heirs and successors, The parties agree to the dismissal of all pending actions between them, including the suit in Division I Water Court against Western Paving. The parties further agree to a mutual release of all claims arising under this Agreement.

The lawsuit in Division I Water Court shall be resolved as follows, by stipulation in such Court.

a. Gregory, Western and Frontier shall agree to the dismissal of the lawsuit with prejudice, subject only to the terms of this



Settlement.

b. Frontier shall agree to the assignment of the easement to Gregory as provided in Paragraph 13 above.

15. Gregory will honor all agreements which Frontier has made with Gregory's immediate neighbors regarding conduct of the sand and gravel mining operations on Gregory's property. Frontier shall provide copies of all such agreement to Gregory and Gregory shall have a three day period to review the agreements and determine whether to proceed with the Settlement Agreement. In the event that after reviewing the agreements with the neighbors, Gregory chooses to not enter into the settlement with Frontier, and any settlement documents which have been executed will be null, void and of no effect.

Gentlemen, I look forward to hearing from you in the near future regarding this counteroffer of settlement. It will remain in



effect for a period of five (5) days from the date hereof. Should you be in need of further clarification, do not hesitate to call me at any time.

Very truly yours,
RUBNER & KUTNER, P.C.

ss

Lee M. Kutner

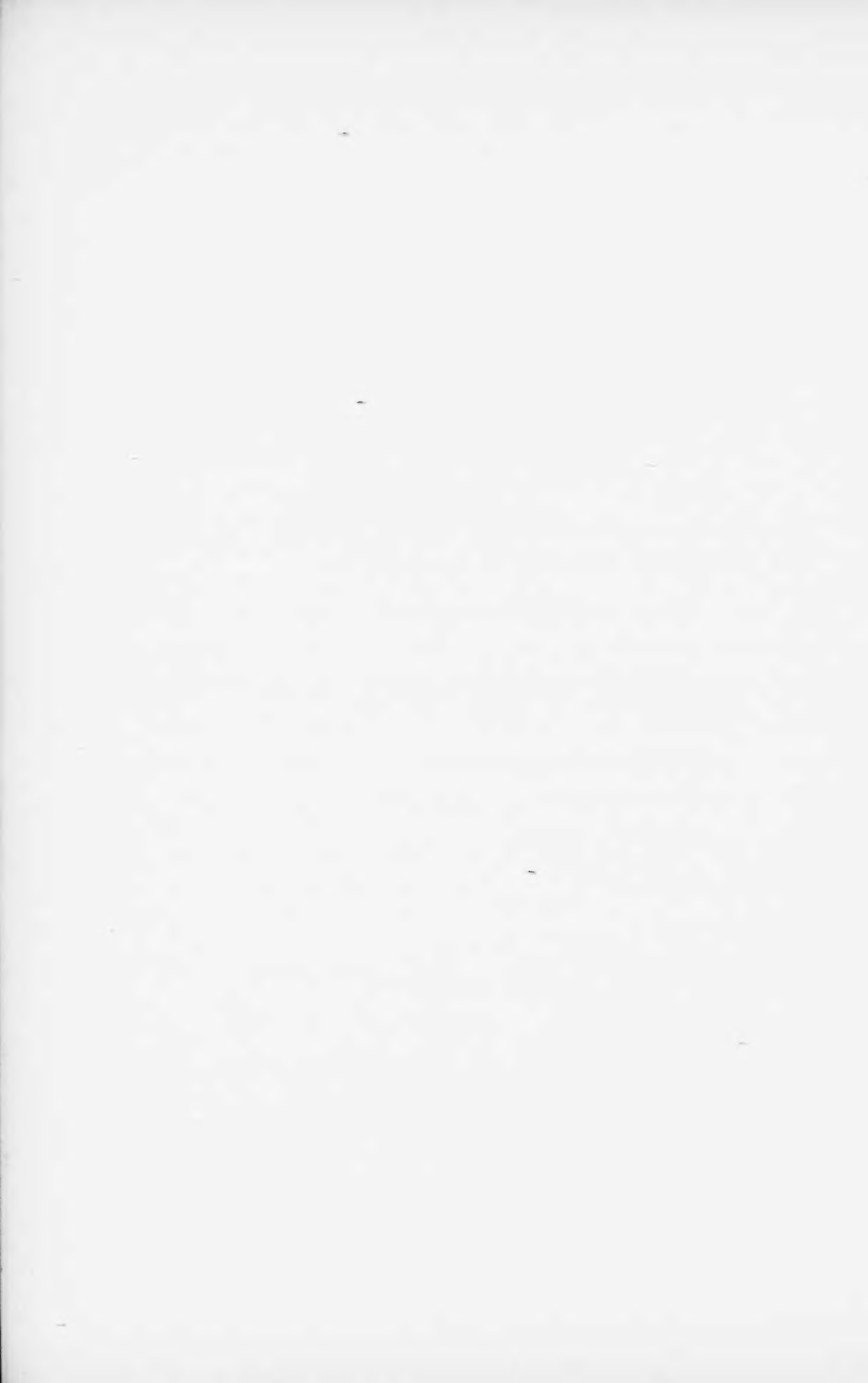
The foregoing settlement offer has been reviewed and approved by Ronald W. Gregory.

ss - Ronald W. Gregory

The foregoing settlement offer has been reviewed and approved by Frontier Materials, Inc.

ss - R. A. DeManche

Pres.



APPENDIX N

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

Bankruptcy No. 86 B 0476 G

IN RE:

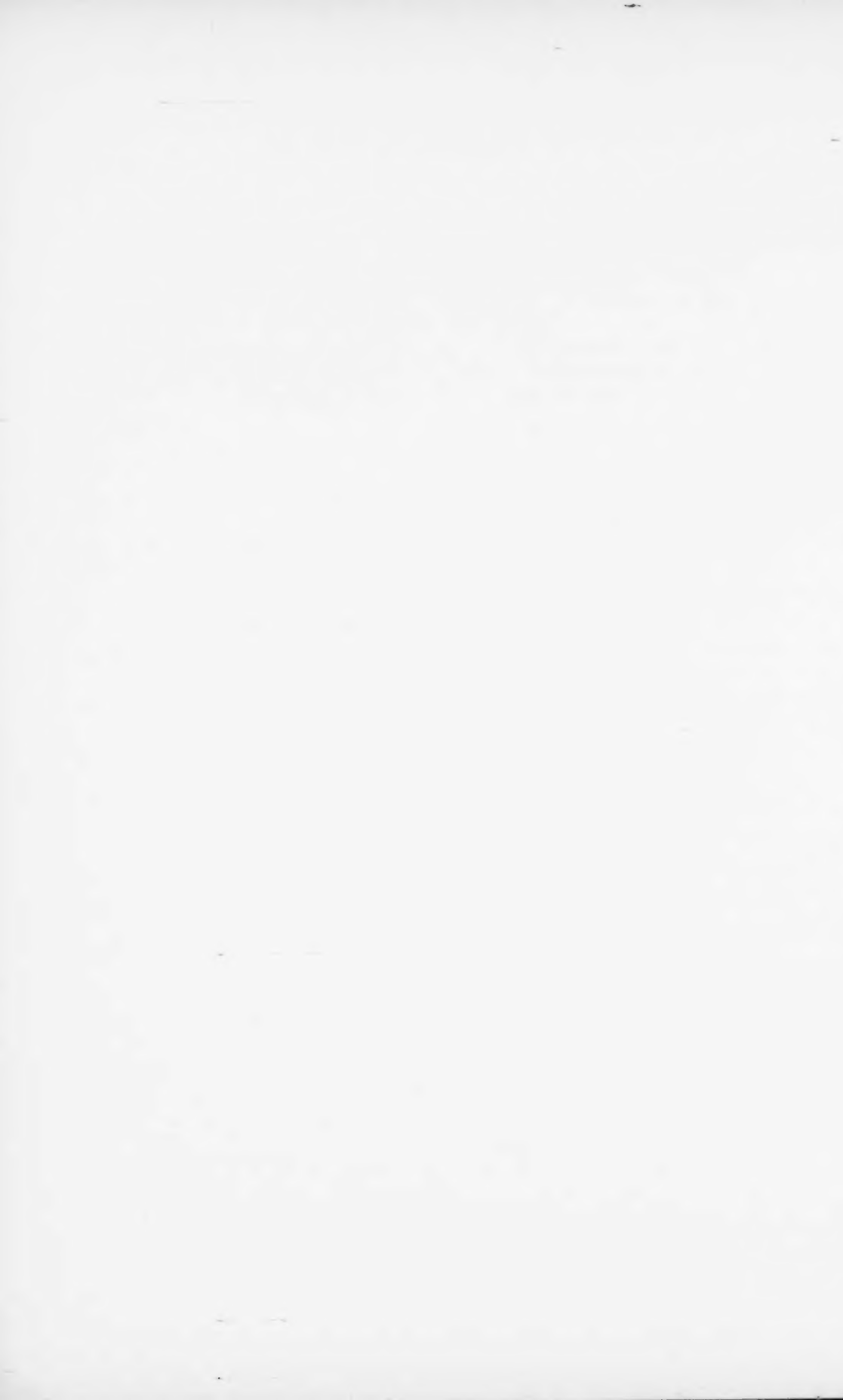
)	
)	
RONALD W. GREGORY)	ORDER APPROVING
SSN: 520-26-3693, and)	SETTLEMENT
DOROTHY L. GREGORY,)	AGREEMENT
SSN: 525-44-8580,)	
Debtors.)	

THIS MATTER having come before the Court on the Application for Approval of Settlement by and between Debtors and Frontier Materials, Inc., it appearing that notice has been given to creditors and parties in interest and no objections having been filed, the Court having reviewed the Settlement and being fully advised,

ORDERS

That the Settlement dated August 21, 1986 by and between the Debtors and Frontier Materials, Inc. is hereby approved; and it is

FURTHER ORDERED



That the Debtors are hereby authorized to execute documents and take such actions as may be necessary and convenient to consummate the Settlement.

DONE and entered this 8 day of September, 1986 at Denver, Colorado.

ss - C. E. Matheson

Judge Charles E. Matheson
Bankruptcy Judge

SUMMARY OF ACTS BY FRONTIER MATERIALS,
INC. NOT IN ACCORDANCE WITH SETTLEMENT
AGREEMENT OF AUGUST 21, 1986

1. Section 15. Failed to provide copies of all neighbor agreements regarding of the sand and gravel operations within three days of Agreement date.

2. Section 15. Entered into a 'post settlement' written agreement with neighbor requiring Petitioners to perform in a manner causing extra financial costs and labor in April 1987.

3. Section 9. Failed and refused to execute all documents and transfer permits, etc. within three days of Petitioners written request of September 9, 1986. Multiple written requests were made and 40 to 120 days passed before compliance.

4. Sections 8 and 9. "Interference" and "Impede" intent conducted by:

a. Fraudulent misrepresentations as to permits held and as to the 'condition' of said permits;

i. Boulder County permit in danger of revocation due to failure to perform according to 'commitments of record' - required Petitioners 90 days, three public hearings and additional financial commitments to prevent revocation;

ii. no Colorado State water discharge permit;

iii. no Boulder County access road permit;

APPENDIX "O-1"



iv. no Boulder County floodplain development permit;

v. no Colorado State monitoring wells permits;

vi. no well permit as required by Colorado State for open pit mining;

vii. no emissions permit as required by Colorado State;

viii. no scalehouse permit as issued by Boulder County.

b. Commencement on December 23, 1986 of action against Petitioners to force performance of required acts previously accomplished by Petitioners pursuant to Section 14:

i. release of Boulder County District Court 'breach of contract' action as released on December 10, 1986;

ii. release of Weld County Water Court 'water right destruction' action; as released in October 1986;

iii. executing the second deed of trust which was accomplished in November 1988.

c. 40 Day delay in transferring valid 'permit';

d. Personal neighbor visits to organize neighbor "opposition" in September 1986;

e. Attorney request to cancel Boulder County Permit in September 1987;

f. Cancellation of 'mining bond' with Colorado State Mined Land Reclamation Board in April 1987 requiring the posting by investors of \$31,554 which, unless the



bond were replaced, the mining permit would be cancelled and the defeat of the plan of reorganization.

g. Commencement of action in January 1987 for Petitioner 'default' in first \$50,000 payment when, pursuant to Section 1.a.(ii.), said payment was not due by reason of Frontier delays;

h. Commencement in February 1987 of action to 'compel' Petitioner Mrs. Gregory to execute Mortgage although Section 4. referred to Gregory in the singular and further, Mrs. Gregory did not execute said Settlement Agreement nor were any provisions contained in said Agreement for her signature.

i. Refusal in April 1988 to accept the second installment of \$50,000 when Section 3. states that any portion can be paid at any time without penalty thereby defeating Section 6. for securing 17 acres and improvements.

5. Section 10. Continued unabated opposition to, and interference with, Petitioners plan of reorganization and efforts relating thereto notwithstanding its admission that the Settlement Agreement constituted adequate protection of their interests.

a. Filed objection to Disclosure Statement in December 1987;

b. Objected to Confirmation on February 26, 1988.



Bankruptcy Rule 2018(a)

"In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter."

Bankruptcy Rule 5004(a)

"A bankruptcy judge shall be governed by 28 USC 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case."



Federal Rules of Evidence

FRE 103. "(a) Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which the questions were asked.

(b) The court may add any other and further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(d) Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court."

FRE 602 " A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses."

FRE 803. "The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(24) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact;

(B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(C) the general purposes of these rules and the interests of justice will be best served by admission of the statement into evidence. However a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare and meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant."

APPENDIX "Q-2"



APPENDIX R

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

BRADFORD L. BOLTON
Clerk

400 Columbine Building
1845 Sherman Street
Denver, Colorado 80203

March 17, 1988

TO THE CLERK, U.S. DISTRICT COURT

In re: RONALD W. GREGORY AND DOROTHY L. GREGORY
Bankr. Case No. 86 B 0476 G

Dear Sir:

Pursuant to Rule 46, Local Rules of
Bankruptcy Procedure, pleased be advised of the
following:

[x] Notice of Appeal/Motion for Leave to Appeal
was not timely filed as specified in B.R. 8002.
Appeal was filed 3-15-88, more than ten days
from the date the Judgment was entered on
docket.

Sincerely,

BRADFORD L. BOLTON, Clerk

ss - Lorraine A. Robinson

By

Deputy Clerk

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OFFICE OF THE CLERK

CASE NO. 91333

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

RONALD W. GREGORY and DOROTHY L. GREGORY,

Petitioners,

vs.

FRONTIER MATERIALS, INC.; U.S. TRUSTEE; ST.
VRAIN LEFT HAND WATER CONSERVANCY DISTRICT;
FRONTIER AIRLINES FEDERAL CREDIT UNION;
FIRST FEDERAL SAVINGS BANK OF OKLAHOMA;
GRANGE MUTUAL LIFE CO.; BOULDER COUNTY,
COLORADO; E.H.M.G. CONSULTANTS; ROSS J.
WABEKE, Interim Trustee of Estate,

Respondents.

RESPONSE OF ROSS J. WABEKE TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ROSS J. WABEKE
DeGOOD, BALL, EASLEY, WABEKE & BRUMMET
COUNSEL OF RECORD FOR
ROSS J. WABEKE, BANKRUPTCY TRUSTEE
325 EAST 7TH STREET
LOVELAND, COLORADO 80537
(303) 667-2131

I. STATEMENT OF ISSUES PRESENTED

A. Whether the United States Bankruptcy Court for the District of Colorado erred in finding Appellants', (hereinafter referred to as "Petitioners") Chapter 11 Plan unfeasible and in finding a diminution of Petitioners' Chapter 11 bankruptcy estate and the lack of any reasonable likelihood of rehabilitation in the Court's conversion of the case to a Chapter 7 liquidation proceeding;

B. Whether the United States Bankruptcy Court for the District of Colorado abused its discretion in approving the Chapter 7 bankruptcy Trustee's Application to sell certain property of the estate;

C. Whether the Appeal by the Petitioners involving the United States Bankruptcy Court's authorization to the Chapter 7 Trustee to sell certain property of the estate has been made moot by the

failure of the Petitioners to obtain a stay related to the sale and the successful consummation of the sale to a good faith purchaser;

D. Whether any of the remaining issues or contentions raised by the Petitioners are matters which are properly before the United States Supreme Court and the Petitioners' Petition for Writ of Certiorari.

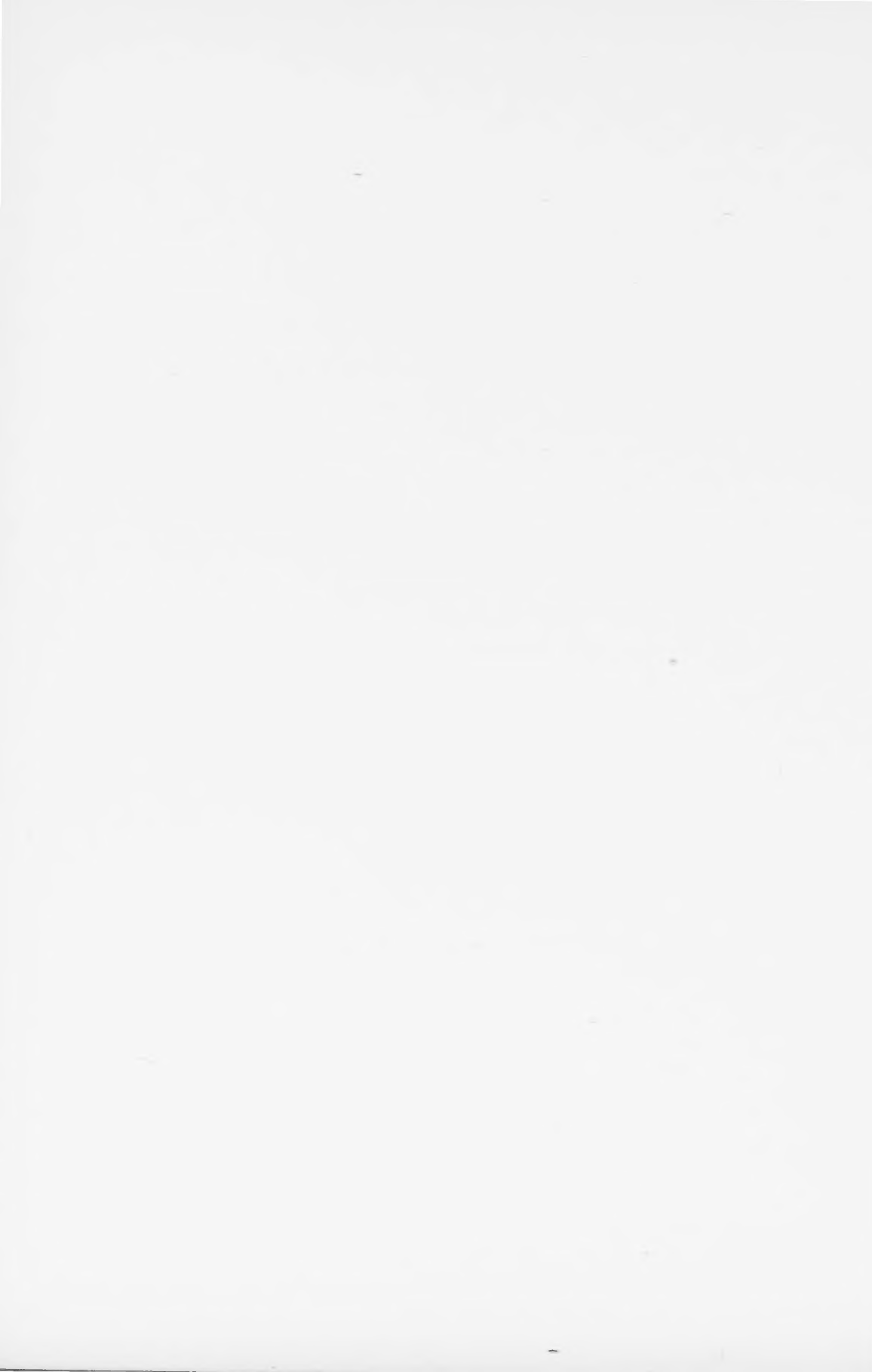


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1. Standard of Review.

2. Discussion.

C. Appeal of Order Approving
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1. Standard of Review.

2. Discussion.

D. Petitioners' Remaining
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this Court.

E. United States Supreme
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II. TABLE OF AUTHORITIES

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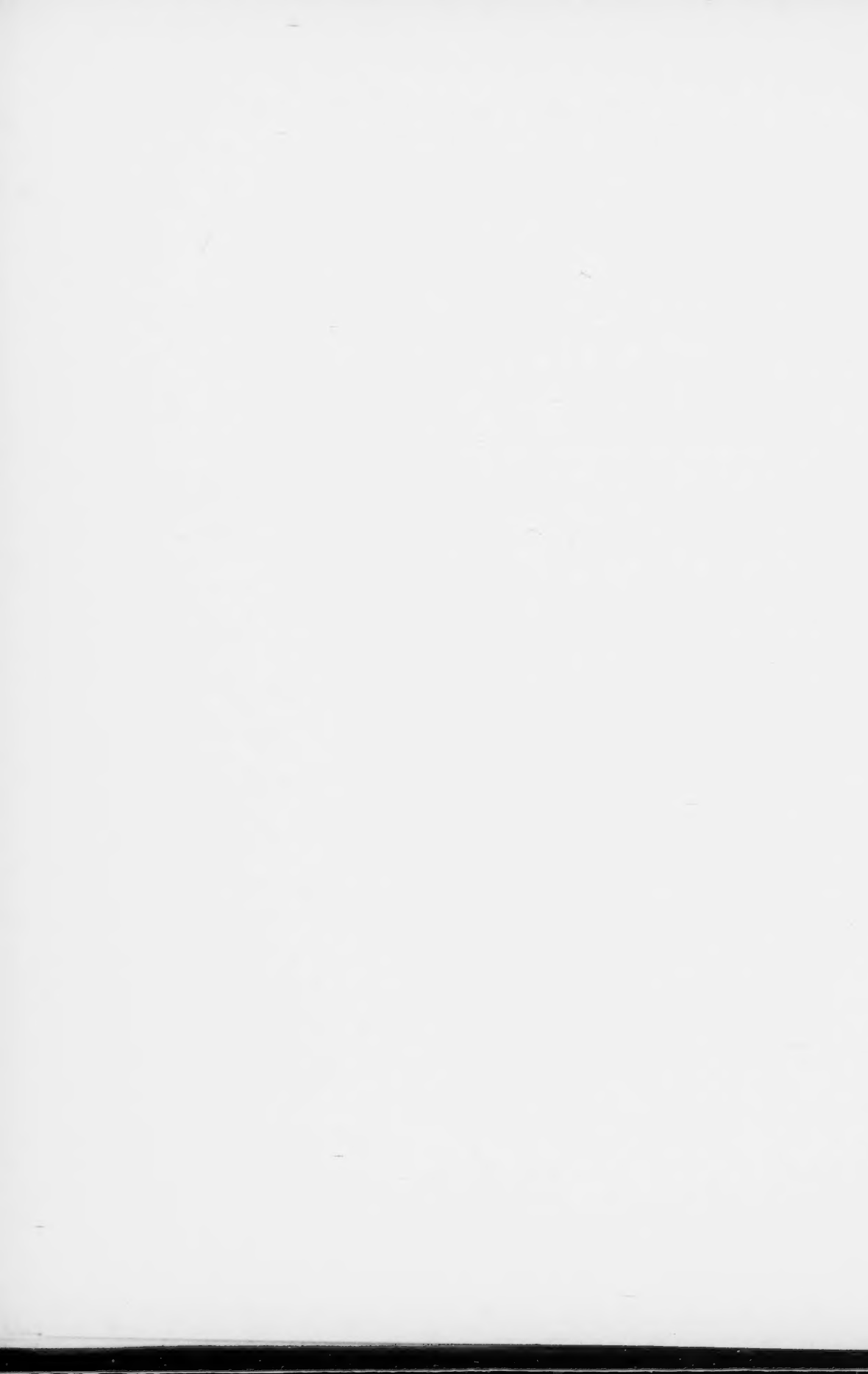
Section 101	8
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III. OPINIONS AND JUDGMENTS IN THE COURTS BELOW

The opinions of the United States Court of Appeals for the Tenth Circuit appears on Appendix A in the Petition. That opinion affirmed a decision by the Federal District Court for the District of Colorado. The United States District Court for the District of Colorado opinion appears in Appendix B to the Petition which decision affirmed the United States Bankruptcy Court's decision converting the Petitioners' Chapter 11 bankruptcy proceeding to a proceeding under Chapter 7 and affirmed the United States Bankruptcy Court decision authorizing the sale of certain real property of the Petitioners.



IV. STATEMENT OF THE CASE

A. Nature of the case; Proceedings and Deposition of the United States Bankruptcy Court for the District of Colorado, United States District Court for the District of Colorado and the United States Court of Appeals for the Tenth Circuit.

Denial of confirmation of plan and conversion to Chapter 7.

(District Court No. 88-F-428 and Tenth Circuit No. 89-1264).

The Petitioners, Ronald W. Gregory and Dorothy L. Gregory, commenced a voluntary proceeding under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., on January 21, 1986, in the United States Bankruptcy Court for the District of Colorado. In the course of the Chapter 11 proceedings, the Petitioners filed a Plan of Reorganization. Objections to Confirmation of the Plan were filed by Frontier Materials, Inc. (hereinafter referred to as "Frontier") and by Grange Mutual Life Company (hereinafter referred to



as "Grange"). An initial hearing on confirmation of the Petitioners' Plan of Reorganization scheduled to be held before the Bankruptcy Court on January 19, 1988, was adjourned on Petitioners' counsel's request based on their inability to go forward with proof of the plan's feasibility. On the adjourned date, February 26, 1988, evidence was taken and the plan presented for confirmation. At the conclusion of the hearing, the Bankruptcy Court, Honorable Charles E. Matheson presiding, denied confirmation of the plan and converted the Petitioners' Chapter 11 case to a Chapter 7 liquidation proceeding. The order denying confirmation and converting the case to Chapter 7 was entered on the Bankruptcy Court docket on March 2, 1988. On March 15, 1988, the Petitioners filed a Notice of Appeal to the United States District Court for the District of Colorado. The Appeal was assigned District Court Docket No. 88-F-428. On March 25,



1988, the District Court entered an Order dismissing the Appeal as untimely filed. On April 11, 1988, the Petitioners filed a Notice of Appeal to the United States Court of Appeal for the Tenth Circuit. The Court of Appeals assigned the Case Docket No. 88-1578. On February 22, 1989, the Court of Appeals entered its Order holding that the District Court erred in computing the time for filing the Appeal under the Bankruptcy Rules directing the Appeal reinstated and remanded to the District Court.

Sale of Property.

(District Court No. 89-F-148).

Following conversion of the Petitioners' case, Ross J. Wabeke (hereinafter referred to as "Trustee") was appointed Trustee of the Chapter 7 bankruptcy estate. The Trustee filed an Application with the Bankruptcy Court on August 31, 1988, to sell certain real property to Frontier in satisfaction of both Frontier and the Grange claims. The



Petitioners opposed the Trustee's Application and hearings were held before the Bankruptcy Court, Honorable Charles E. Matheson presiding on November 30, December 2, and December 9, 1988. At the conclusion of the hearings, the Bankruptcy Court granted the Trustee's Application and an Order was entered on December 14, 1988, approving the sale. On December 19, 1988 the Petitioners filed a Motion for a new trial and sought to vacate the Order that was entered on December 14, 1988 approving the sale, and the Order entered March 3, 1988, denying confirmation of the Plan of Reorganization and converting the Chapter 11 case to Chapter 7 liquidation proceeding. To support the Motions, Petitioners alleged that the presiding Bankruptcy Judge, Honorable Charles E.

Matheson, was biased. The allegations of bias were based upon perceived facial expressions of Court personnel and Frontier's attorneys and upon hand written



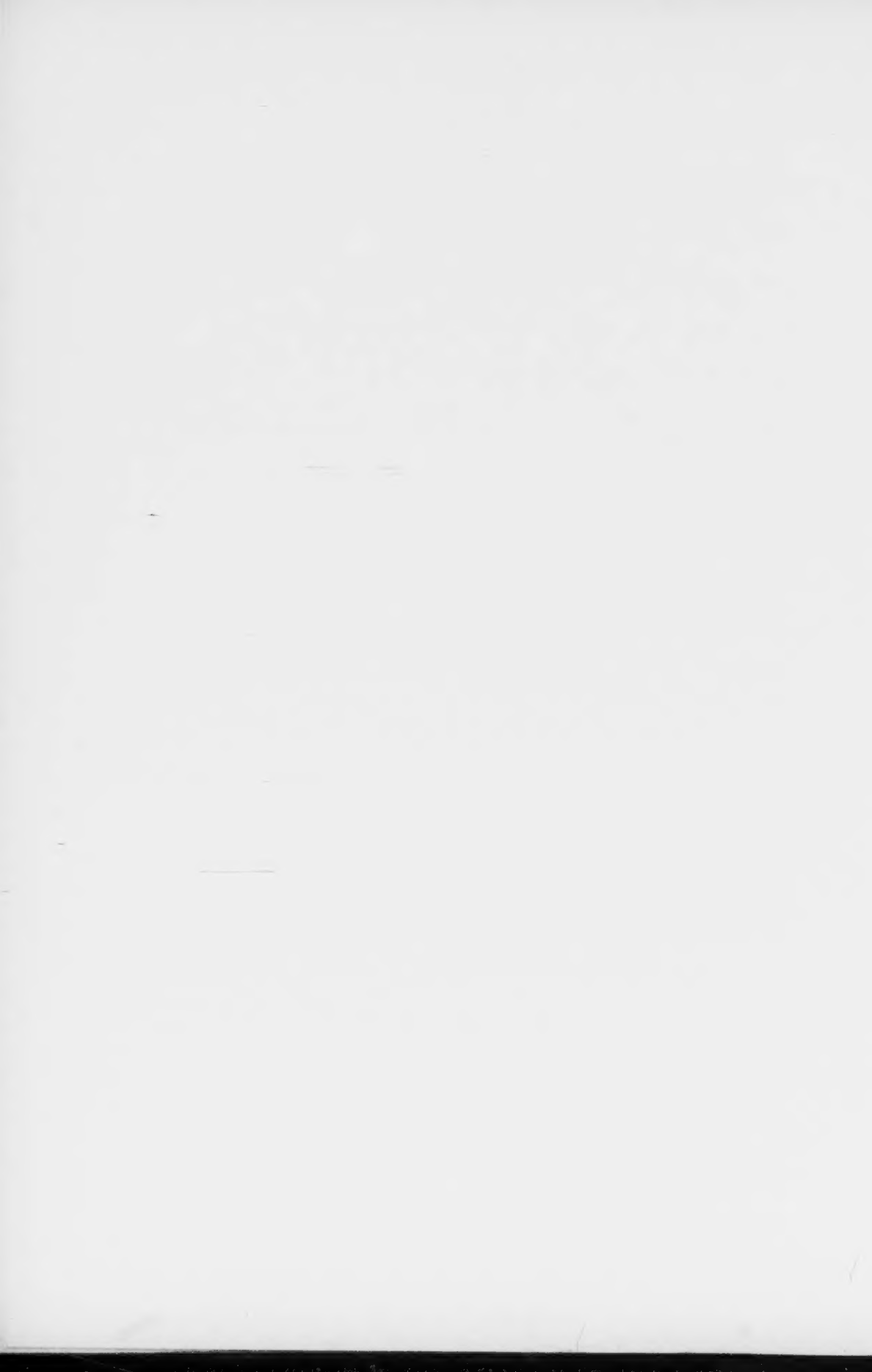
notes made by the Judge during the course of the sale proceedings. On January 3, 1989, Judge Matheson considered the allegations of bias and, although not agreeing with Petitioners' contentions, recused himself from further hearings in the case. The Order of Recusal was entered on January 4, 1989, and the Honorable Sidney B. Brooks was assigned to the case. On January 13, 1989, the Bankruptcy Court, Honorable Sidney B. Brooks presiding, considered Petitioners' Motions for a new trial and for an Order vacating the Orders of March 3, 1988 and December 14, 1988. The Bankruptcy Court denied the Petitioners' Motions. Thereafter on January 24, 1989 the Petitioners filed a Notice of Appeal to the District Court. The District Court assigned the Appeal Case No. 89-F-148. The Trustee by a Bankruptcy Trustee's Deed dated January 27, 1989 conveyed the property to Frontier.

On July 31, 1989, the United States District Court for the District of Colorado,



Honorable Chief Judge Sherman G. Finesilver presiding, issued a written Memorandum Opinion and Order affirming the decisions and Orders of the Bankruptcy Court in both pending Appeals, Case No. 88-F-428 and 89-F-148. Thereafter on August 14, 1989, Petitioners filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit. The Court of Appeals has assigned the Appeal Case No. 89-1264 and 89-1265.

On August 25, 1990, the United States Court of Appeals for the Tenth Circuit, Judges McKay, Seymour and Brorby, issued a written Order and Judgment affirming the decision of the United States District Court for the District of Colorado in both pending Appeals (under Court of Appeals Case No. 89-1264 and 89-1265). The Order and Judgment indicated that the issues raised by the Petitioners in their Briefs regarding breach of settlement agreement and violations of constitutional rights during the Bankruptcy Court proceedings were not before the Court

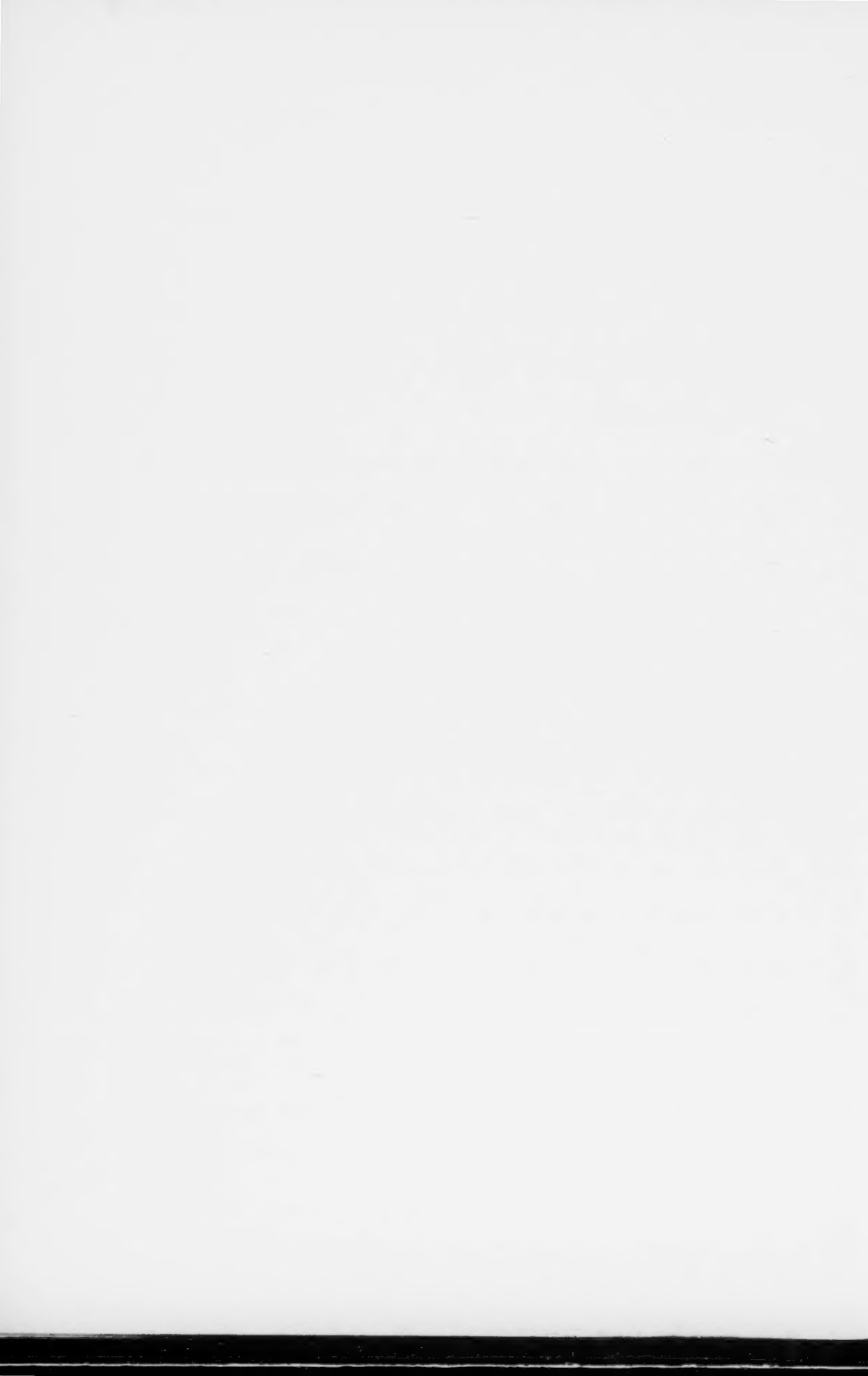


because they were not properly argued to the Bankruptcy Court. On or about October 9, 1990, the Petitioners filed their Petition for Re-Hearing En Banc and on November 27, 1990 the United States Court of Appeals for the Tenth Circuit denied the Petition for Re-Hearing En Banc.

On April 26, 1991 the Petitioners filed their Petition for Writ of Certiorari with the United States Supreme Court.

Other Proceedings and Issues.

In the Court of Appeals, the Petitioners requested and the Court allowed Case No. 89-1264 and 89-1265 to be consolidated. The Petition for Writ of Certiorari is properly directed at those two proceedings only. In both the Motion for Consolidation filed by the Petitioners in the Court of Appeals and the Brief filed by the Petitioners thereafter, it is reflected that the cases of the District and Bankruptcy Courts, other than those treated in the District Court Order of July 31,



1989, are sought to be addressed to the United States Court of Appeals for the Tenth Circuit and therefore also addressed to the United States Supreme Court in this Petition for Writ of Certiorari. The additional District Court case numbers referenced or referred to in some manner by the Petitioners found in their Petition for Writ of Certiorari are as follows:

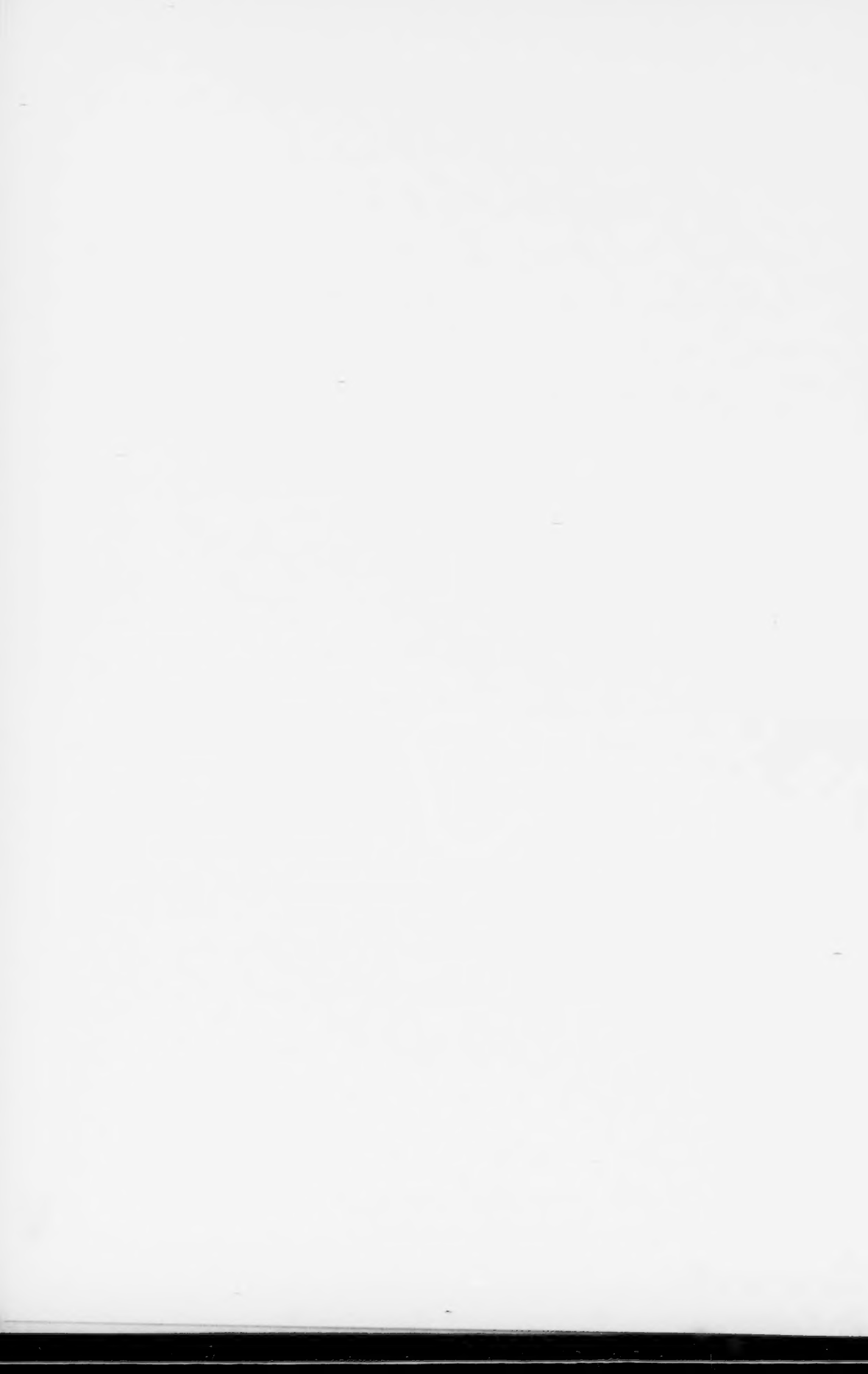
1. District Court Case No.

89-F-818 was a Motion filed by the Petitioners to transfer their case from the Bankruptcy Court for the District of Colorado to the Bankruptcy Court for the District of Wyoming and to remove the Trustee. This matter originated in an Order of the Bankruptcy Court entered April 15, 1989, denying the Petitioners' Motion to transfer the bankruptcy case to the State of Wyoming and to remove the Trustee. The Bankruptcy Court Order of April 25, 1989 was Appealed by the Petitioners to the District Court. The District Court by Order entered



November 3, 1989 in Case No. 89-F-818 dismissed the Appeal with Prejudice due to the Petitioners' failure to prosecute. The dismissal resulted from Petitioners' non-compliance with an Order of the District Court to file an opening Brief by October 23, 1989. The Order directing the filing of a Brief had been issued on Petitioners' plea to vacate an earlier dismissal for failure to file a Brief and for failure to appear at a Show Cause Hearing. The resulting District Court Order of November 3, 1989 dismissing the case with prejudice, has not been appealed to this Court and the issues raised with respect thereto, not being properly before this Court, will not be addressed in this Brief.

2. District Court Case No. 89-F-1404 originates from an Order of the Bankruptcy Court entered August 7, 1989 imposing sanctions against the Petitioners for failure to abide by certain Bankruptcy Court Rules. The Bankruptcy Court's Order



of August 7, 1989 was appealed by the Petitioners to the District Court. The District Court, by order entered October 31, 1989 in Case No. 89-F-1404 dismissed the appeal with prejudice, due to the Petitioners' failure to prosecute. The dismissal resulted from the Petitioners' non-compliance with an order to show cause and failure to appear at the show cause hearing. The resulting District Court Order dismissing the appeal with prejudice has not been Appealed to this Court and the issues raised with respect thereto, not being properly before this Court, will not be addressed in this Brief.

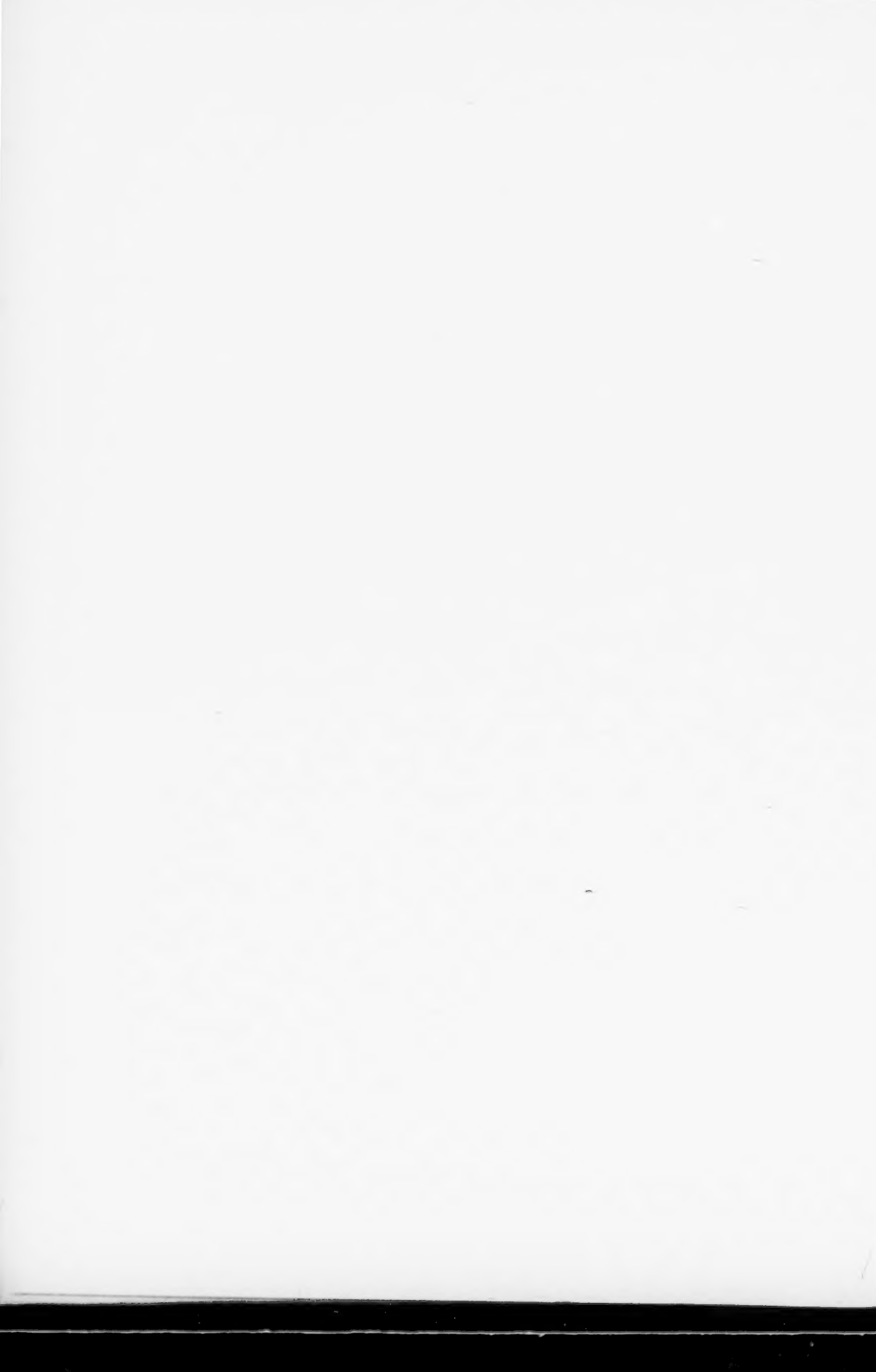
3. District Court Case No. 90-F-128 is a matter that originated in an Order of the Bankruptcy Court entered on January 9, 1990. The Orders so appealed had to do with the sale of gravel mining equipment and other Orders apparently entered on that same date. The Petitioners appealed the Bankruptcy court Order and on



March 1, 1990 the District Court dismissed the case with prejudice. The resulting District Court Order dismissing the appeal has not been appealed to this Court and the issues raised with respect thereto, not being properly before this Court will not be addressed in this Brief.

4. District Court Case No. 91-C-811 originates with a Bankruptcy Court Order of April 29, 1991 granting the Trustee's Motion for an Order Limiting the Debtors' Request for Access to the Trustee's Files. The Petitioners appealed the Bankruptcy Court Order granting said Motion. On June 21, 1991 the District Court dismissed the Petitioners' Appeal with prejudice for failure to prosecute. The resulting District Court Order has not been Appealed to this Court and the issues raised with respect thereto, not being properly before this Court will not be addressed.

5. A second Motion by the Petitioners to move the case to the State of



Wyoming and to remove the Trustee and Judge Sidney B. Brooks resulted in an Order of the Bankruptcy Court denying said Motion. Said Order of the Bankruptcy Court has not been appealed to the District Court and therefore is not properly before this Court and will not be addressed.

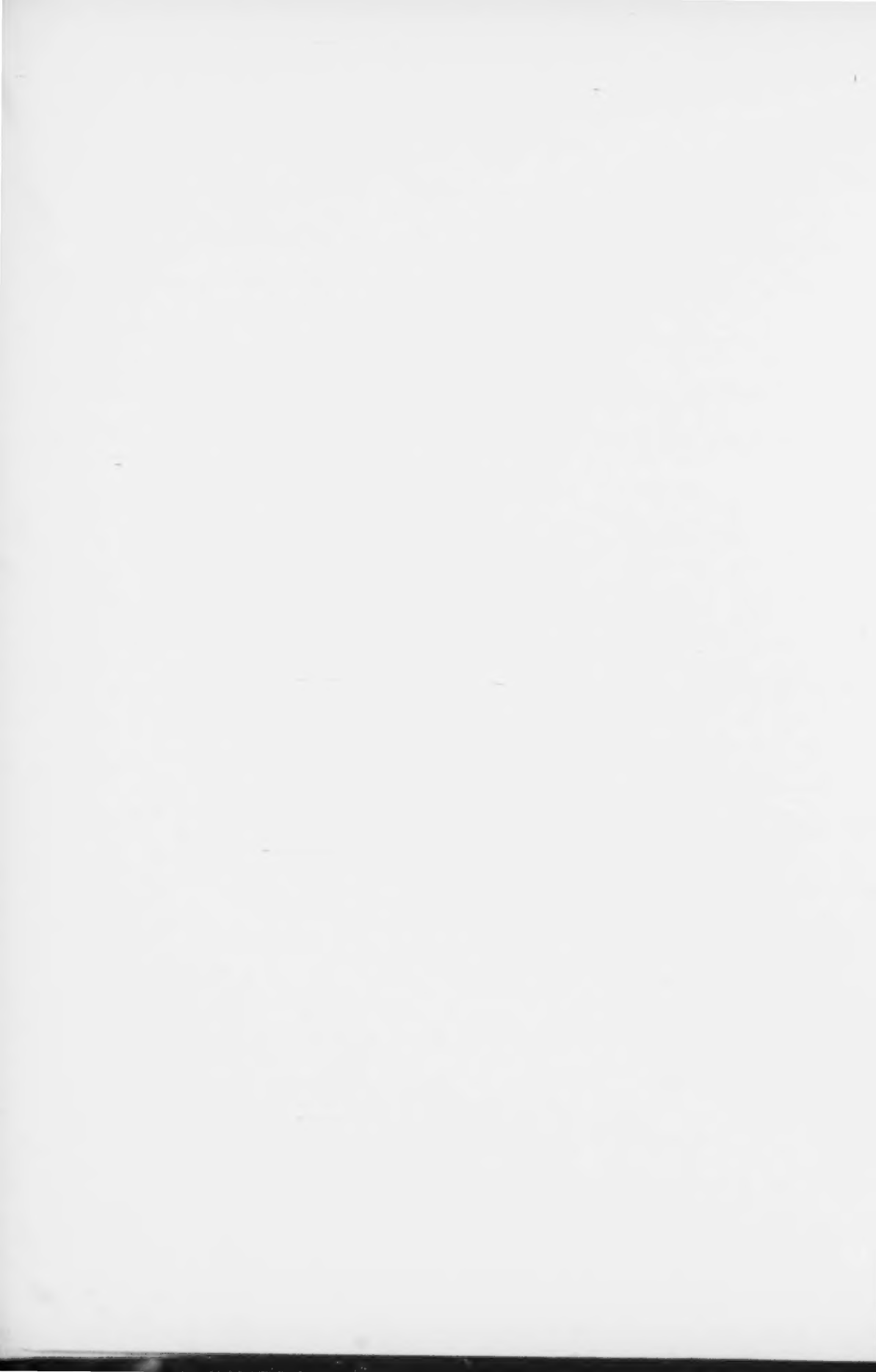
6. . A Bankruptcy Court order granting a declaratory judgment to the Trustee in his Complaint to have a certain Mined Land Reclamation Bond declared to be property of the bankruptcy estate was never appealed by the Petitioners and therefore is not properly before this Court and will not be addressed.

B. Statement of Facts.

The Petitioners, Ronald W. Gregory and Dorothy L. Gregory, filed a voluntary Petition seeking relief under Chapter 11 proceeding, the Petitioners sought to reorganize and pay creditors with the profits from a sand and gravel business proposed to be operated on land owned by the

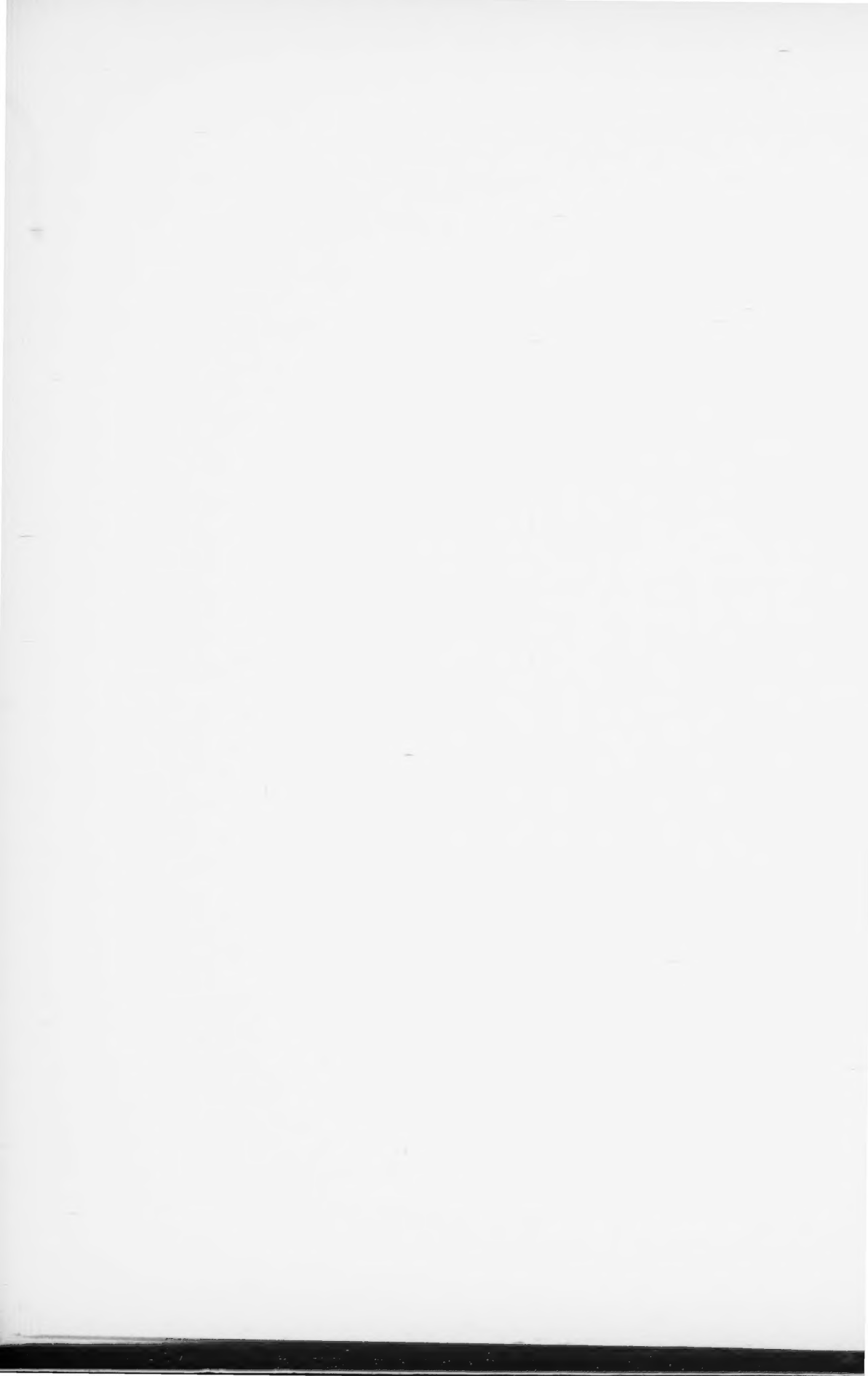


Petitioners in Boulder County, Colorado. The Petitioners proposed means for reorganization was set forth in a plan filed with the Bankruptcy Court on December 3, 1987. (Bkpt. Ct. Doc. #182). Frontier objected to the Petitioners' Plan of Reorganization. (Bkpt. Ct. Doc. #193 and #194). Grange, a secured creditor holding a first Deed of Trust on the land proposed by the Petitioners to be used for the sand and gravel mining operation, further requested that the Bankruptcy Court convert the Petitioners' reorganization proceeding to a proceeding under Chapter 7 for liquidation. (Bkpt. Ct. Doc. #194). A hearing on confirmation of the Petitioners' Plan for Reorganization was initially scheduled to be held before the Bankruptcy Court on January 19, 1988. On request of Petitioners' counsel, made due to an admitted inability to prove feasibility of the plan, the confirmation hearing was continued until February 26, 1988. (Bkpt.



Ct. Tr. Volume II and Volume IV). At the conclusion of the hearing on confirmation held February 26, 1988, the Bankruptcy Court determined that the Plan of Reorganization proposed by Petitioners was not feasible and, therefore not confirmable. (Bkpt. Ct. Tr. 22688 Volume IV, pp 56-59). Further, the Petitioners' Chapter 7 case had been pending for two years, the value of the estate's assets were diminishing, and a successful rehabilitation and reorganization was not likely. Based upon the record, the motion of Grange to convert the case to a Chapter 7 proceeding, and the apparent consent of the Petitioners' attorney to conversion the Bankruptcy Court entered its Order converting the Chapter 11 proceeding to a proceeding under Chapter 7 of the Bankruptcy Code on March 2, 1988. (See Bkpt. Ct. Tr. 22688 Volume 4, pp 65-69; Bkpt. Ct. Doc. #206).

Shortly after conversion of the bankruptcy case to a proceeding under

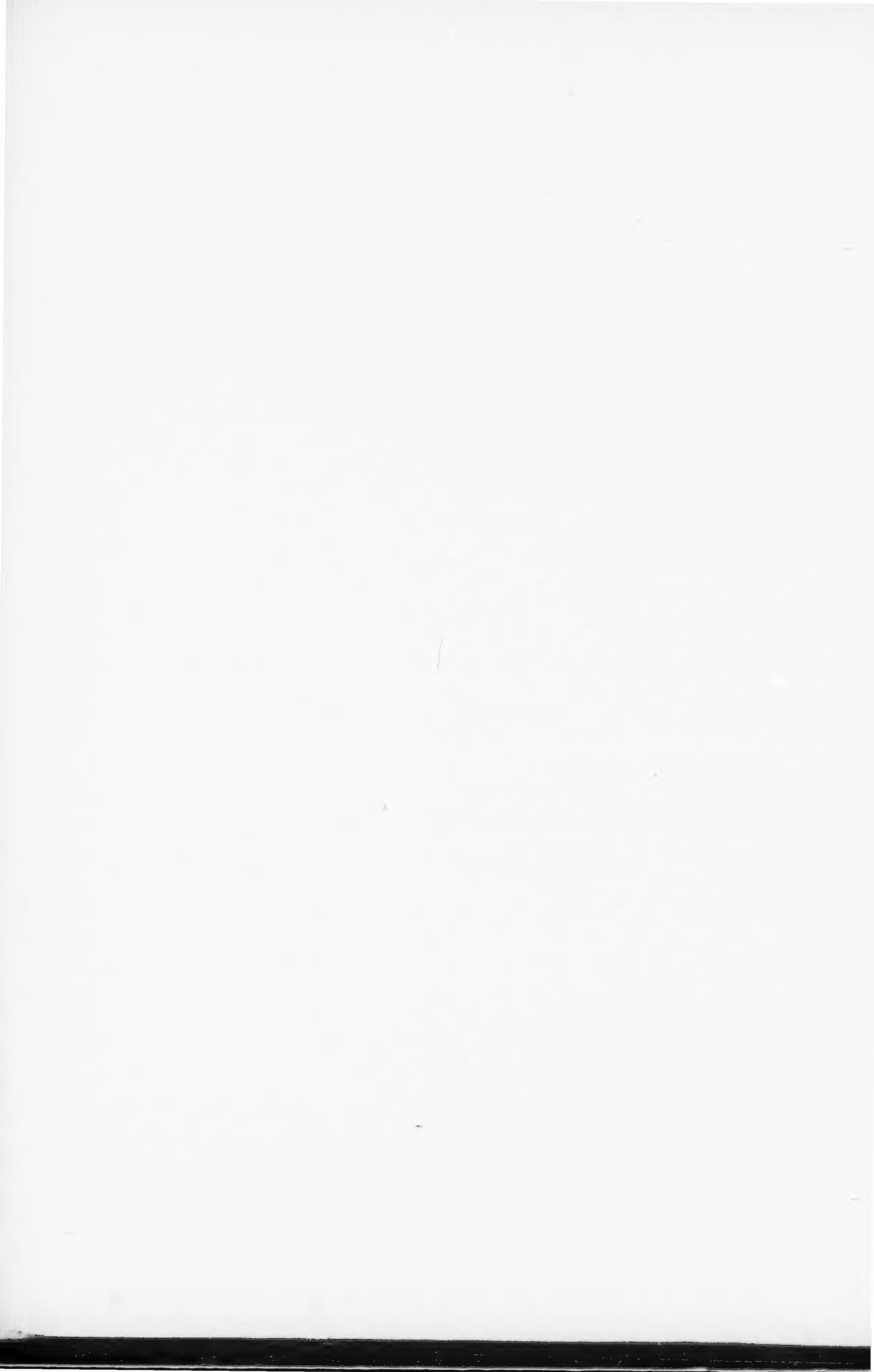


Chapter 7, Ross J. Wabeke was appointed Interim Trustee to administer the assets of the Petitioners' estate. At the Meeting of Creditors held pursuant to 11 U.S.C. Section 341 no other person was elected as Trustee and Ross J. Wabeke became the Trustee. Thereafter, in the course of performing his duties, the Trustee negotiated a sale of the Petitioners' property in Boulder, County, Colorado to Frontier. (Bkpt. Ct. Doc. #253). In consideration of the conveyance to Frontier, Frontier and Grange released their claims against the Petitioners' estate and Frontier assumed the indebtedness to Grange secured by the first Deed of Trust. The Bankruptcy Court, after considering Objections posed by the Petitioners to the sale (Bkpt. Ct. Doc. #263), determined that the proposed transaction was in the best interest of the estate and entered its Order approving the sale on December 14, 1989. Furthermore, the Bankruptcy Court found that the actual value to the estate of the sale



was approximately 1.15 million dollars. (Bkpt. Ct. Doc. #287, #288 and #289; Bkpt. Ct. Tr. 12288 Volume 5). The sale was consummated through the execution and delivery of a Trustee's Deed dated January 27, 1989. The Deed was recorded on January 30, 1989 under Reception No. 965047, Film No. 1564, by the Boulder County, Colorado Clerk and Recorder.

The Petitioners raised in their Brief many other issues not properly before this Court. It is the position of the Trustee as Respondent that these matters do not have to be addressed because of the failure on the part of the Petitioners to Appeal them properly. These issues include alleged conversations between the Petitioners and their former counsel, allegations of bias on part of the Bankruptcy Court, a settlement agreement never made a part of the record before the United States District Court for the District of Colorado, alleged denial of access to the Courts and proceedings below



not before this Court on Appeal and alleged denial of the Petitioners right to due process.

C. Misstatements of Fact Included in the Petition for Writ of Certiorari.

The Petitioners have included in their Petition for Writ of Certiorari many misstatements of fact. These misstatements appear to be conclusions reached by the Petitioners that are not supported by any evidence; statements related to issues never presented to the lower Courts and therefore not relevant to this Petition and allegations of misconduct which have never been proved and which should have no part of this proceeding. The United States Supreme Court Rules specifically direct a Respondent to a Petition for Writ of Certiorari to point out such misstatements. The misstatements as made by the Petitioners are as follows: (All page number references are to the page number of the Petitioners' Petition for Writ of Certiorari).



1. Page 5 to 9, ending with the paragraph beginning "note". This section of the Petition is a re-cap of the assets owned by the Petitioners at the time they filed their Chapter 11 bankruptcy proceeding. The values indicated are nothing more than the Petitioners' own estimate of value, are inflated and have never been proven. The misstatements regarding those valuations are as follows:

a. There has never been any proof that the mineral value of the Petitioners' Boulder County, Colorado property was \$1,970,000.00 and that the value of the water right destruction was from a minimum of \$50,000.00 to \$365,000.00 (page 6).

b. There has never been any proof that the value of the Petitioners' ranching property in Oklahoma was \$350,000.00 in addition to home site development value, mineral rights, lime stone quarry or oil and gas production value

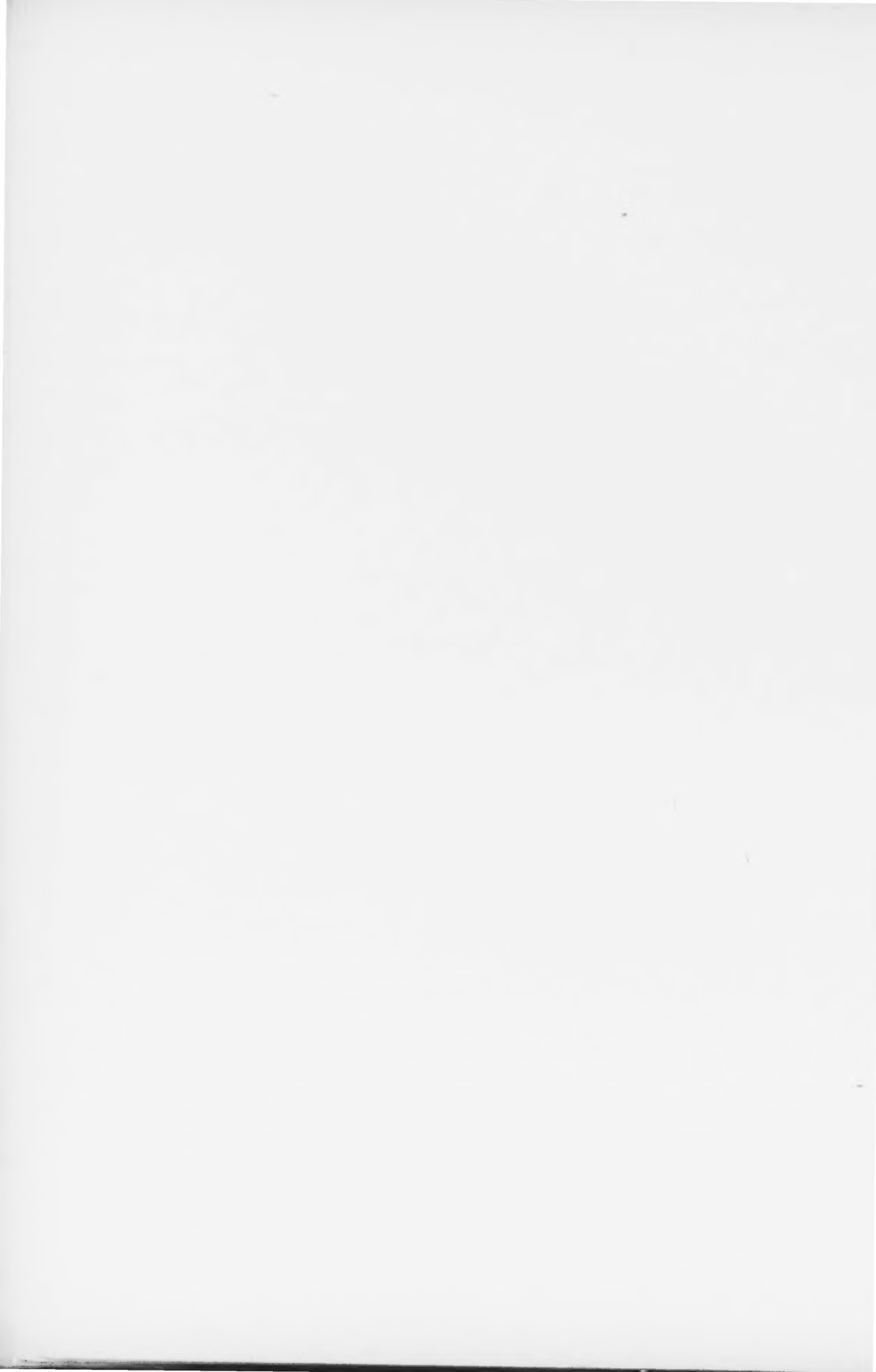
(page 7).

c. There was never any proof that the Petitioners' commercial property in Wyoming was worth \$450,000.00 (page 8).

d. There has never been any proof that the Petitioners' Albany County, Wyoming property was worth \$234,000.00 (page 9).

e. The Petitioners' statements that they were financially encumbered to an apparent total of \$750,000.00 on assets totalling minimally from \$2,735,000.00 to \$5,143,000.00 is not true, has never been proven and is a gross distortion of reality. Valuations are Petitioners and are unsupported by any credible evidence whatsoever and are not part of this Petition for Writ of Certiorari. Simply stated the Petitioners are incorrect regarding their opinions of value.

2. Allegations regarding statements with counsel regarding the



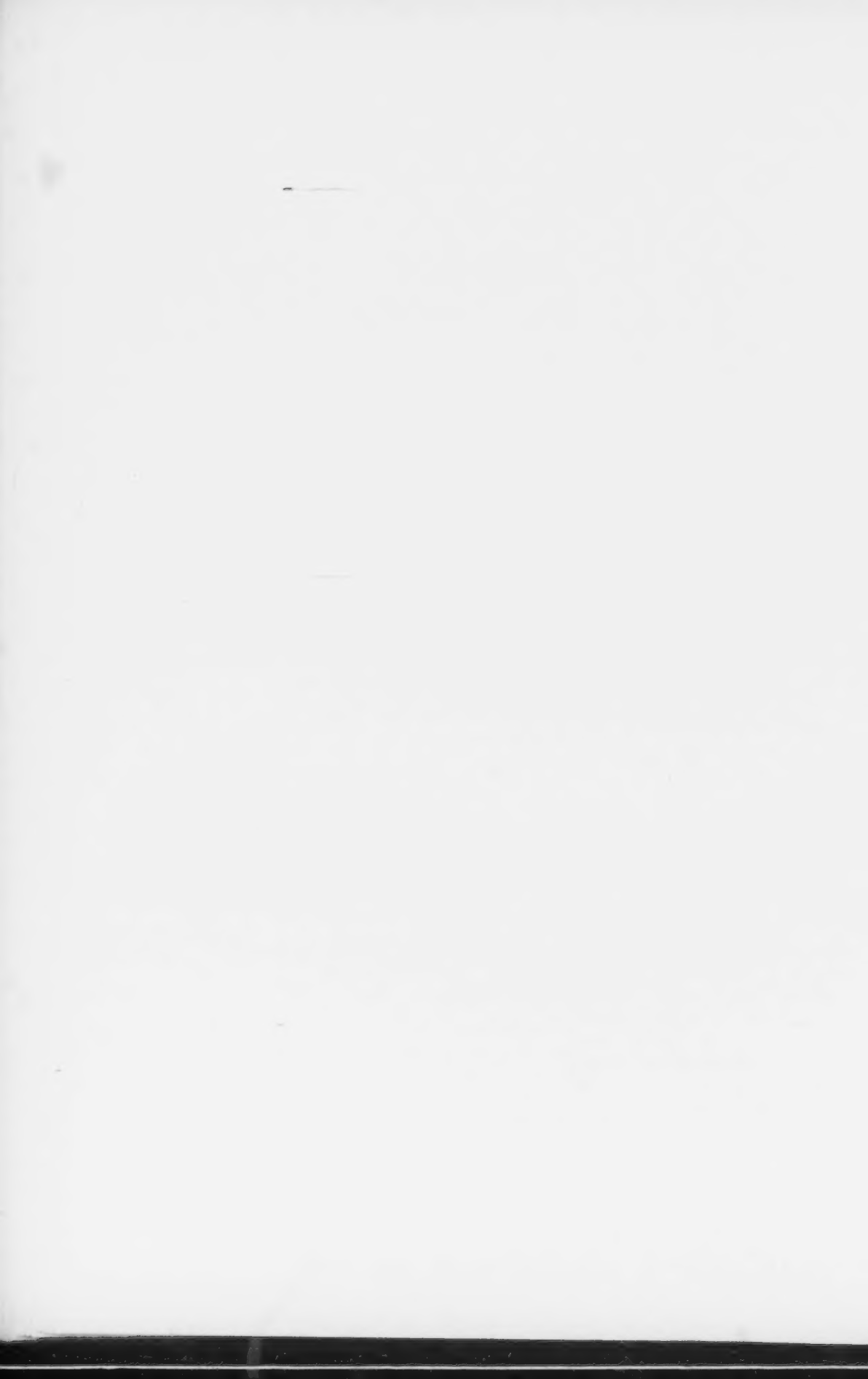
perceived cost of reorganization are not a part of any record and are not properly before this Court (page 17).

3. Allegations regarding statements with counsel as to what was explained or not explained to the Petitioners regarding the effects of bankruptcy are not a part of any record before this Court and are not properly before this Court in this Petition for Writ of Certiorari.

4. Allegations regarding statements with counsel regarding demand for additional fees have never been raised, are not a part of the record and are not before this Court on review.

5. Allegations and statements regarding the Petitioners' understanding of the legal ramifications of signing a settlement agreement are not part of the record and are not properly before this Court.

6. Allegations that Frontier had

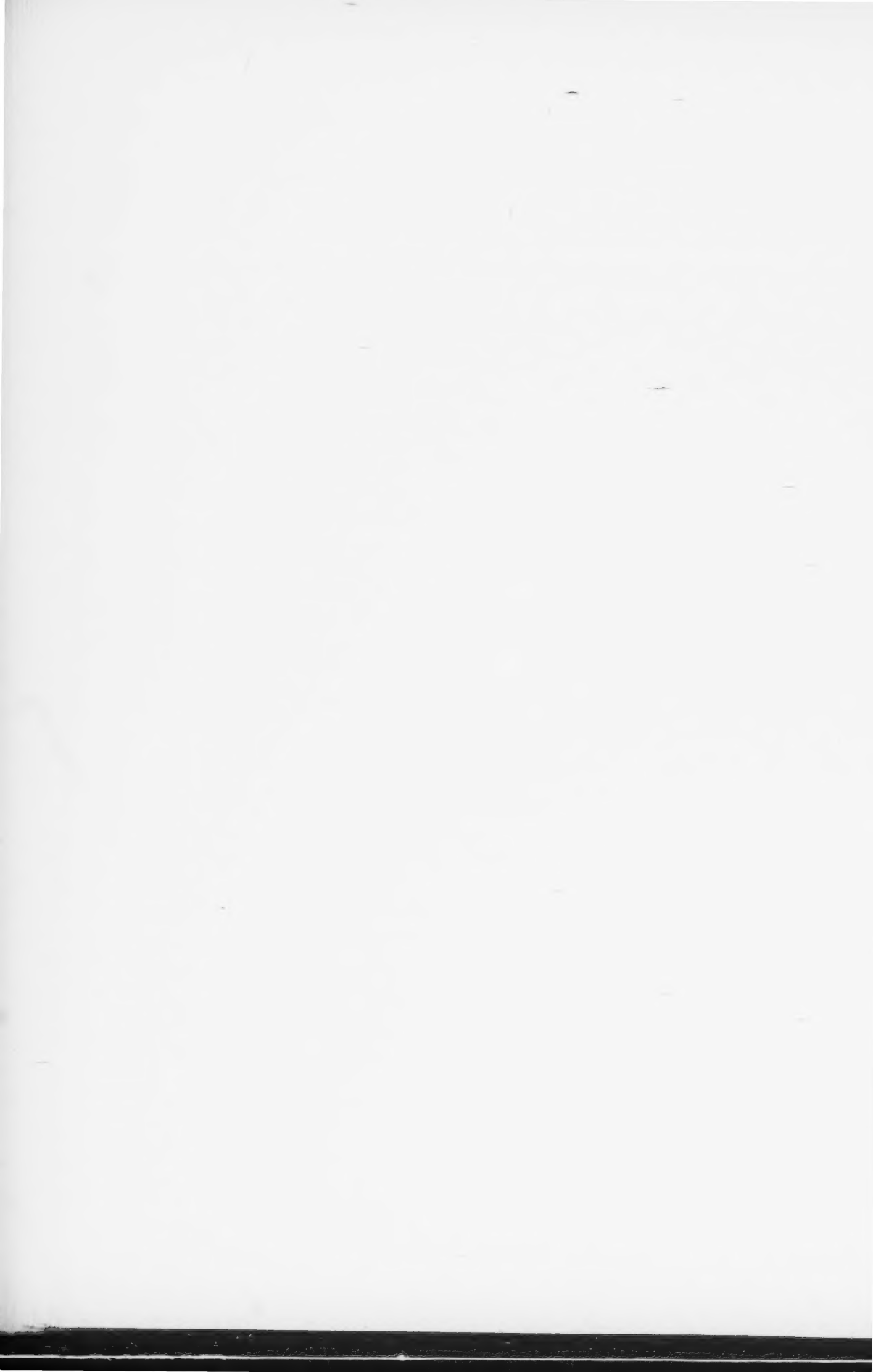


engaged in fraudulent misrepresentation are essentially scandalous in nature. There is no proof of such allegations in the record and there is certainly no proof anywhere in the record that Frontier acted viciously and maliciously. This matter is not properly before this Court and is unsupported in any event.

7. Allegations that Frontier violated and breached a settlement agreement are unsupported by any evidence and that matter is not properly before this Court for review.

8. Allegations that the Bankruptcy Court acted to defeat the term of the settlement agreement are not before this Court and are unsupported by any evidence of the record.

9. Beginning on page 23 and continuing on to page 24, the Petitioners attempt to state as fact that Judge Sidney B. Brooks and the Bankruptcy Court is biased against all Debtors. The allegations are



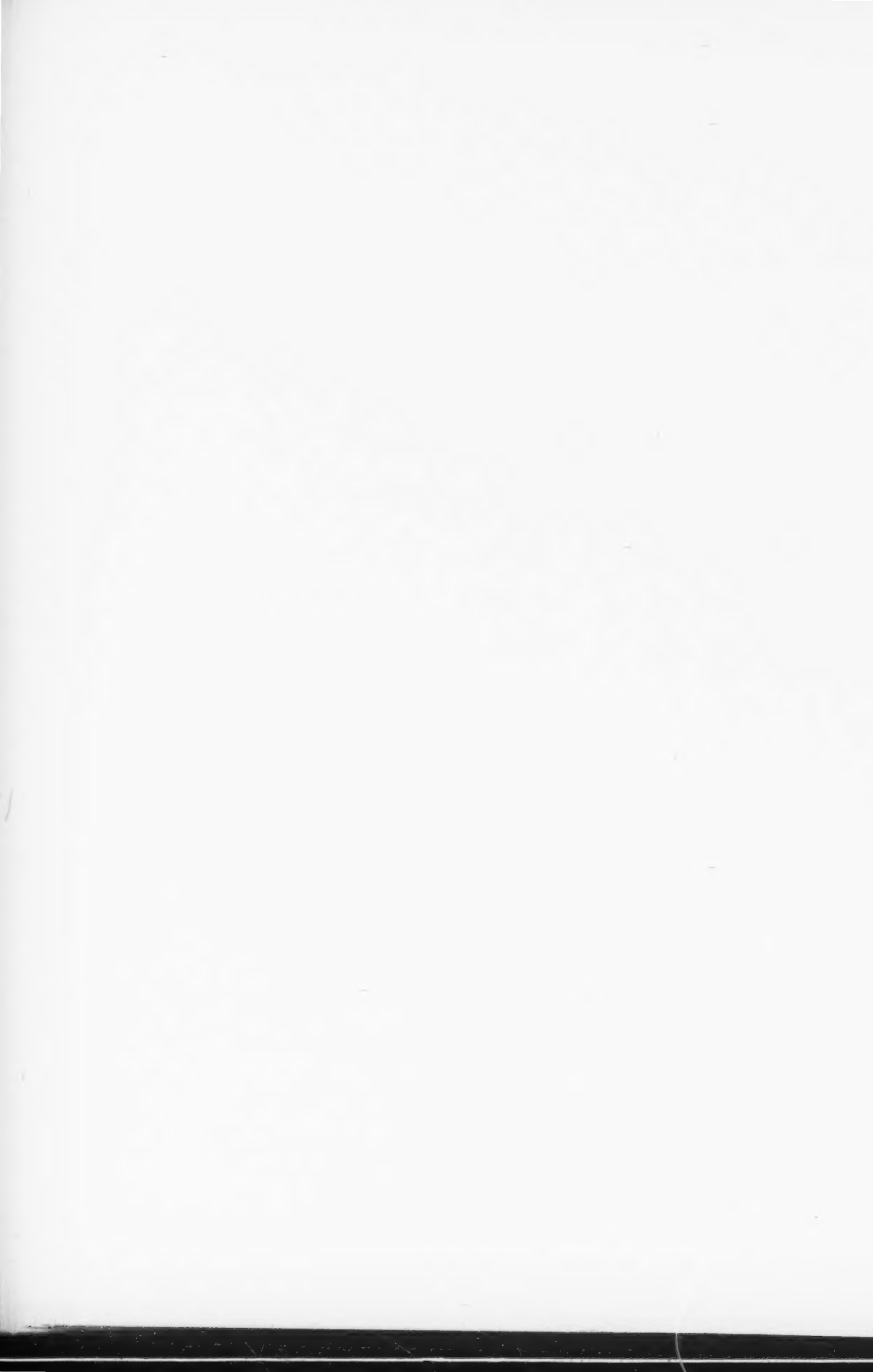
totally without merit are not part of the record and are not properly before this Court.

10. On pages 25 and 26 the Petitioners allege that the reversal by the United States Appellate Court for the Tenth Circuit of the District Court's Order dismissing their original Appeal as not being timely filed was not in time to present the loss of the most "valuable" property necessary for reorganization. Said reversal has nothing to do with the sale of the property the Petitioners claim to be most valuable. The clear facts supported by the record is that no Appeal Bond had been posted by the Petitioners. Furthermore, the United States Court of Appeals for the Tenth Circuit eventually affirmed the District Court decision which affirmed the Bankruptcy Court decision regarding the conversion of the Petitioners' Chapter 11 proceeding and the sale of the property in question.

11. On page 26, the Petitioners

allege that Ross J. Wabeke is not the properly appointed Trustee in this bankruptcy proceeding. The Petitioners have made these allegations numerous times in numerous proceedings regarding the bankruptcy case citing 11 U.S.C. Section 303(g). It has been pointed out to the Petitioners on numerous times that that particular Bankruptcy Code Section deals with involuntary bankruptcy proceedings. This case is not an involuntary proceeding. Rather, it is a voluntary Chapter 11 proceeding followed by a conversion to Chapter 7.

12. On page 27, the Petitioners state that on December 12, 1988 the Bankruptcy Court, Bankruptcy Court Judge Matheson, presiding allowed the sale of property for \$845,000.00 which property was necessary for the reorganization of the Petitioners. The Petitioners failed to recognize the fact that at the time the sale was approved, they were not in a



reorganization but rather they were in Chapter 7 which called for liquidation of their assets. Furthermore, Judge Matheson in his approval of the Trustee's Application to sell said property indicated that the true value of the said property was \$1,150,000.00.

13. On page 28, the Petitioners allege that the Trustee has a current Motion pending filed with the Bankruptcy Court seeking to deny the Petitioners' access to his file. This allegation is not a part of the record and is not properly before this Court on Appeal. However, the Trustee feels it necessary to clarify this matter if it is determined to be relevant. The Trustee did file a Motion seeking an Order restricting the Petitioners' access to his file after a demand was made on the Trustee for complete access to his file with less than twenty-four hours notice. This demand came at a time when the Petitioners had a separate civil action pending against the Trustee in



which they were attempting to collect alleged damages. At the time of this Brief, said civil action has been dismissed by the United States District Court for the District of Colorado which decision was Appealed to the United State Court of Appeals for the Tenth Circuit which Court affirmed the District Court's decision. The Bankruptcy Court granted the Trustee's Motion to limit the Petitioners' access to his files indicating that there were avenues open to the Petitioners to obtain information from the Trustee's files. This decision has not been Appealed by the Petitioners.

14. On page 28 and 29, the Petitioners allege the actual sales price for the mining property was \$490,000.00. These figures are not believable and are in fact a total fabrication of the truth. The United States Bankruptcy Court for the District of Colorado, Judge Charles E. Matheson presiding, determined that the



actual value of the sale of said property to the estate was \$1,150,000.00. There was never a legitimate cash offer of \$300,000.00 more than the sales price realized as alleged by the Petitioners. There was a person who indicated that he might make an offer at a later date however, no actual offer was made.

15. On pages 29 to 31, the Petitioners state as fact that Judge Charles E. Matheson harbored personal prejudice and bias against the Petitioners. These conclusions are based on handwritten notes which may have been made by Judge Matheson. The Petitioners conclude from these notes which apparently state "airline jockey, bartender and buffalo humper" that there was prejudice and bias. There has never been any proof of the alleged prejudice and bias.

16. In pages 31 to 36, the Petitioners attempt to chronicle the course of this litigation. Said chronology is not complete. Petitioners have left out



numerous Motions that they have filed all of which have been denied. Said Motions and the Orders related to those Motions are not a part of the record before this Court and are not a part of this Appeal.

17. On pages 37, the Petitioners make certain conclusions regarding their being uninformed of the bankruptcy proceedings or the ramifications of said proceedings. These statements are not part of the record, are not before this Court on Appeal and are nothing more than unsupported heresay.

18. On page 38, the Petitioners attempt to state reasons why the Court should grant their Petition for Writ of Certiorari. This section of the Petitioners' Petition for Writ of Certiorari appears to continue until page 67 of their Petition.

19. On page 40, the Petitioners allege that there is a tendency in the District of Colorado to appoint Judges



(apparently Bankruptcy Judges) who are creditor oriented. (Where do Petitioners get this?). These allegations are first of all false and have no evidence to support them and are clearly not a part of the record or a part of this Appeal.

20. On pages 40 and 41, the Petitioners allege other statistics about Chapter 11 bankruptcy practice in the State of Colorado none of which is supported by any credible evidence, all of which is improper for inclusion in the Petition for Writ of Certiorari and is not properly before this Court.

21. On page 42, the Petitioners allege that only one creditor has been provided with any compensation. The truth is that the Petitioners' conduct with regard to the continued administration of their bankruptcy estate makes it impossible to close the case and make distribution to creditors as long as there are pending Appeals.

22. On page 42, the Petitioners make allegations of illegal acts and gains of the Trustee. These allegations are absolute lies which have never been supported by evidence, are entirely groundless and are improper to be included in this Petition.

23. On page 44, the Petitioners make allegations regarding the denial of several of their alleged investors to intervene. It is not certain what the Petitioners believe the investors were to intervene in. The investors had numerous opportunities to intervene in the administration of this case if they had been dealt with as creditors, however, the Petitioners have never scheduled these investors as creditors.

24. On page 44, the Petitioners allege that the Trustee converted equipment valued at \$330,000.00 for \$41,000.00. The equipment in question was sold by the Trustee pursuant to Court Order properly

obtained after notice to all parties in interest. \$41,000.00 was the best price that could be obtained. This is another instance of the Petitioners being unable to appreciate the reality of what their assets were really worth.

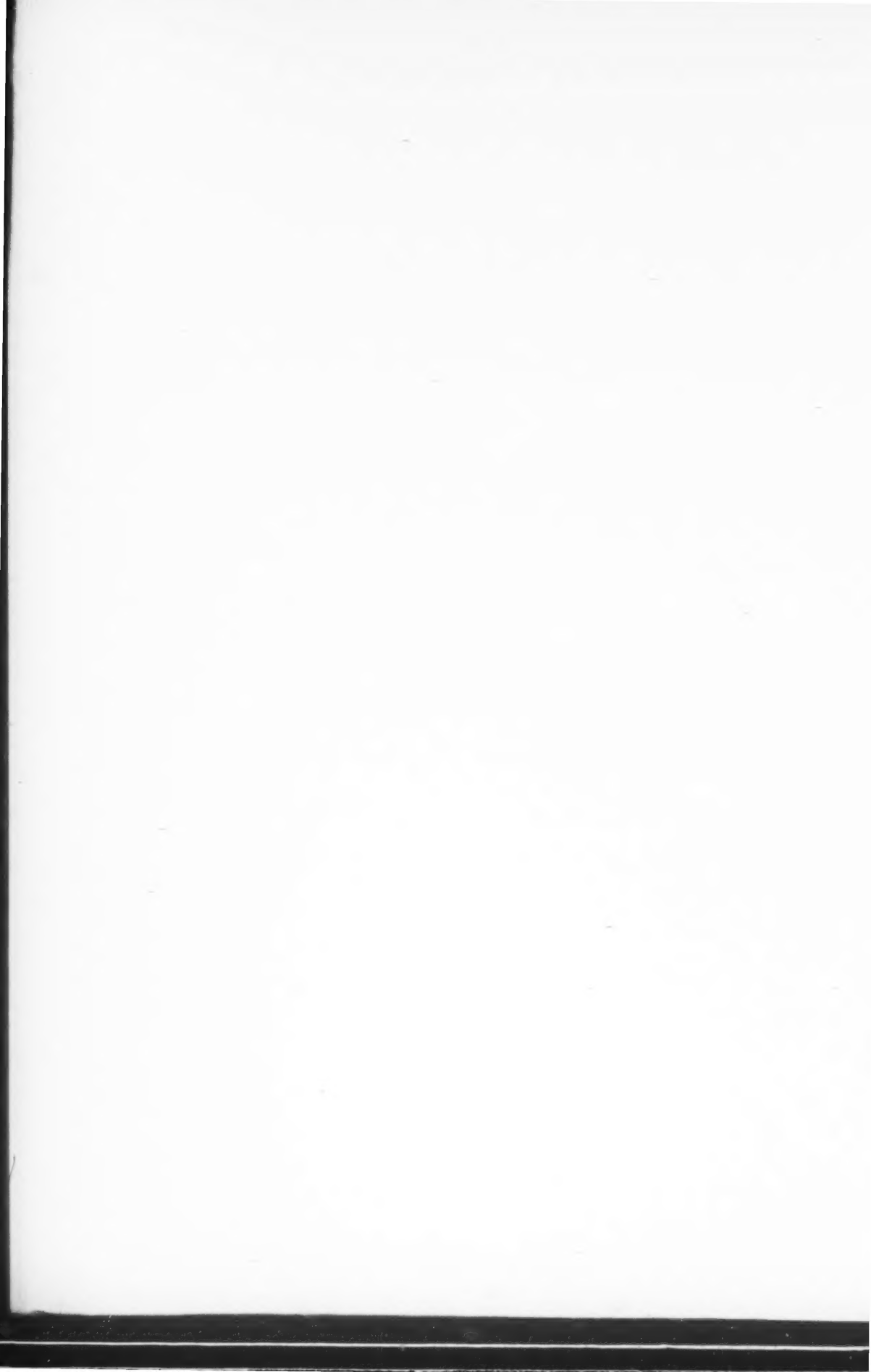
25. On pages 52 and 53, the Petitioners allege that the United States Bankruptcy Court for the District of Colorado and the United States District Court for the District of Colorado were engaged in conspiracy. Once again, the Petitioners choose to offer no proof in the Court below and there is no evidence in the record before the Court with regard to these conclusions.

27. In pages 57 to 60, the Petitioners try to introduce into their Petition for Writ of Certiorari matters not properly before the Court in that they were never brought before the lower Courts for review. The contents of this part of the Petition for Writ of Certiorari deals with



the sale of certain property in the State of Wyoming which the Petitioners feel was not sold for an adequate price. Again there is nothing in the record to support the Petitioners' contentions.

28. The issues presented in pages 57 to 61 of the Petition for Writ of Certiorari are not matters properly before the Court and appear to have not been matters before any Court at any time other than the allegations by the Petitioners that they have filed Motions to remove the Trustee; to transfer their case to Wyoming and to disqualify Judge Brooks.



V. SUMMARY OF ARGUMENT

A. The decision below in which the United States Court of Appeal for the Tenth Circuit affirmed decisions of the Federal District Court and the United States Bankruptcy Court regarding the conversion of the Petitioners' case to Chapter 7 essentially relates to findings of fact and such determination lies within the sound discretion of the United States Bankruptcy Court. Based on the evidence presented to the United States Bankruptcy Court the Petitioners' Chapter 11 Plan of Reorganization was clearly not feasible and the conversion of the Petitioners' case to Chapter 7 based on that infeasibility and the diminution of value in their estate was clearly justified. There has been no showing of any abuse of discretion.

B. The decision of the United States Court of Appeals for the Tenth Circuit

affirming the Federal District Court and United States Bankruptcy Courts' decisions approving the sale of property of the estate is based on finding of fact that should not be set aside unless they are proved to be clearly erroneous. There was ample evidence before the Court below that the sale of the assets by the Bankruptcy Trustee was for a sufficient consideration. There was no abuse of discretion evidenced by the Courts below and the decision should be affirmed.

C. One of the issues raised in the Petition for Writ of Certiorari has to do with the sale of real estate. The sale was clearly consummated long ago and no attempt by the Petitioners to stay the sale has been successful. As such, the Petition for Writ of Certiorari is moot with regard to the issue of the sale of the Petitioners' property.

D. Petitioners raise numerous other issues which are clearly not before this Court.



VI. ARGUMENT

A. Denial of Confirmation and Conversion of Chapter 7.

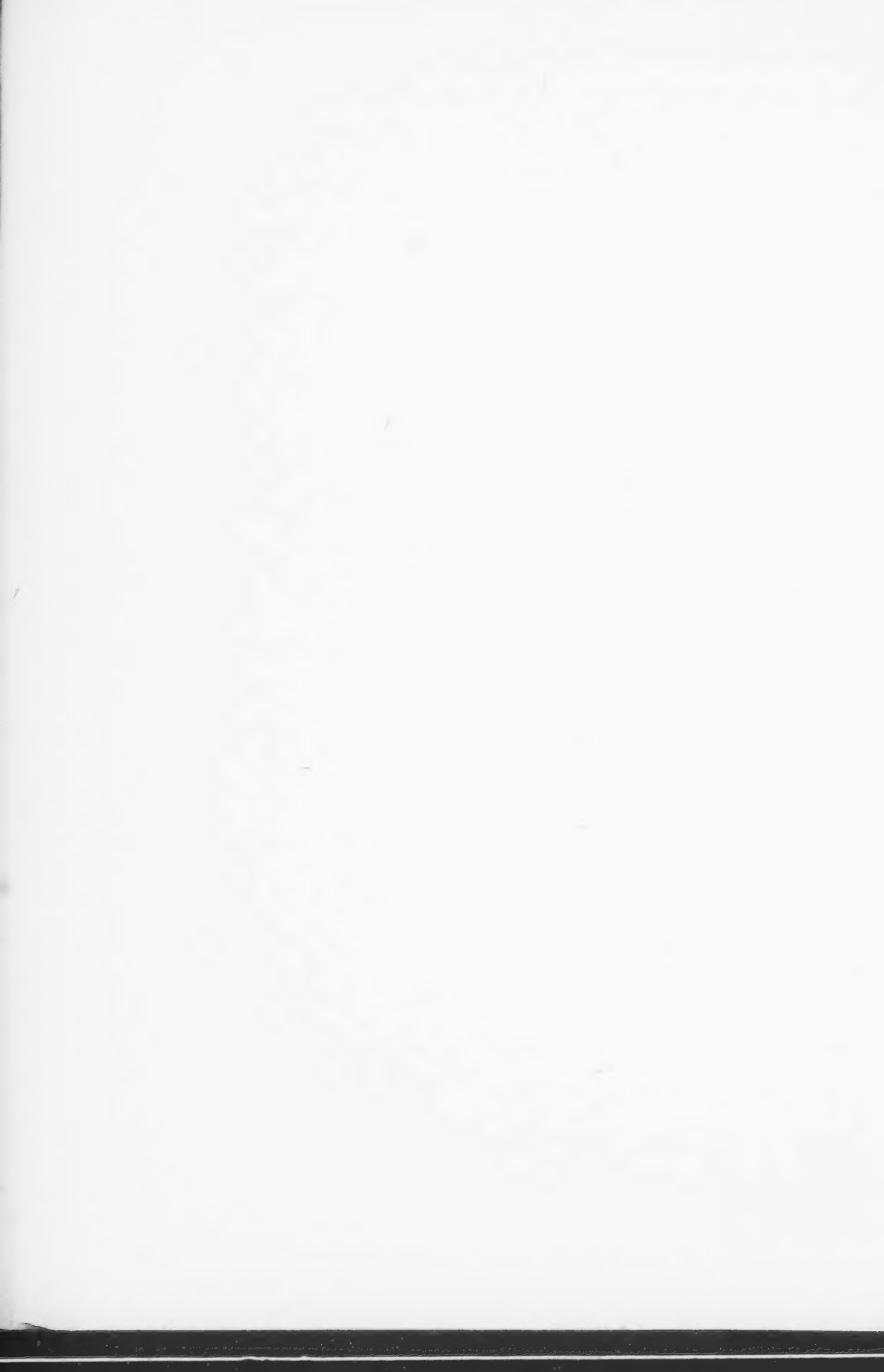
1. Standard of Review. A determination that a Chapter 11 plan is not feasible is a finding of fact. In Re: Pizza of Hawaii, Inc., 761 F 2d 1374, 1377 (9th Cir. 1985). Findings of fact of a Bankruptcy Court are not to be set aside unless clearly erroneous and due regard is to be given to the opportunity of the Bankruptcy Court to assess the credibility of the witness. Bankruptcy Rule 8013; In Re: Herd, 840 F 2d 757, 759 (10th Cir. 1988). A determination to convert a case from Chapter 11 to Chapter 7 lies within the sound discretion of the Bankruptcy Court. Albany Partners, Ltd. v. Westbrook; (In Re: Albany Partners, Ltd., 749 F 2d 670, 674 (11th Cir. 1984). Conclusions of law may be renewed de novo.

2. Discussion. At the conclusion of the hearing held regarding the

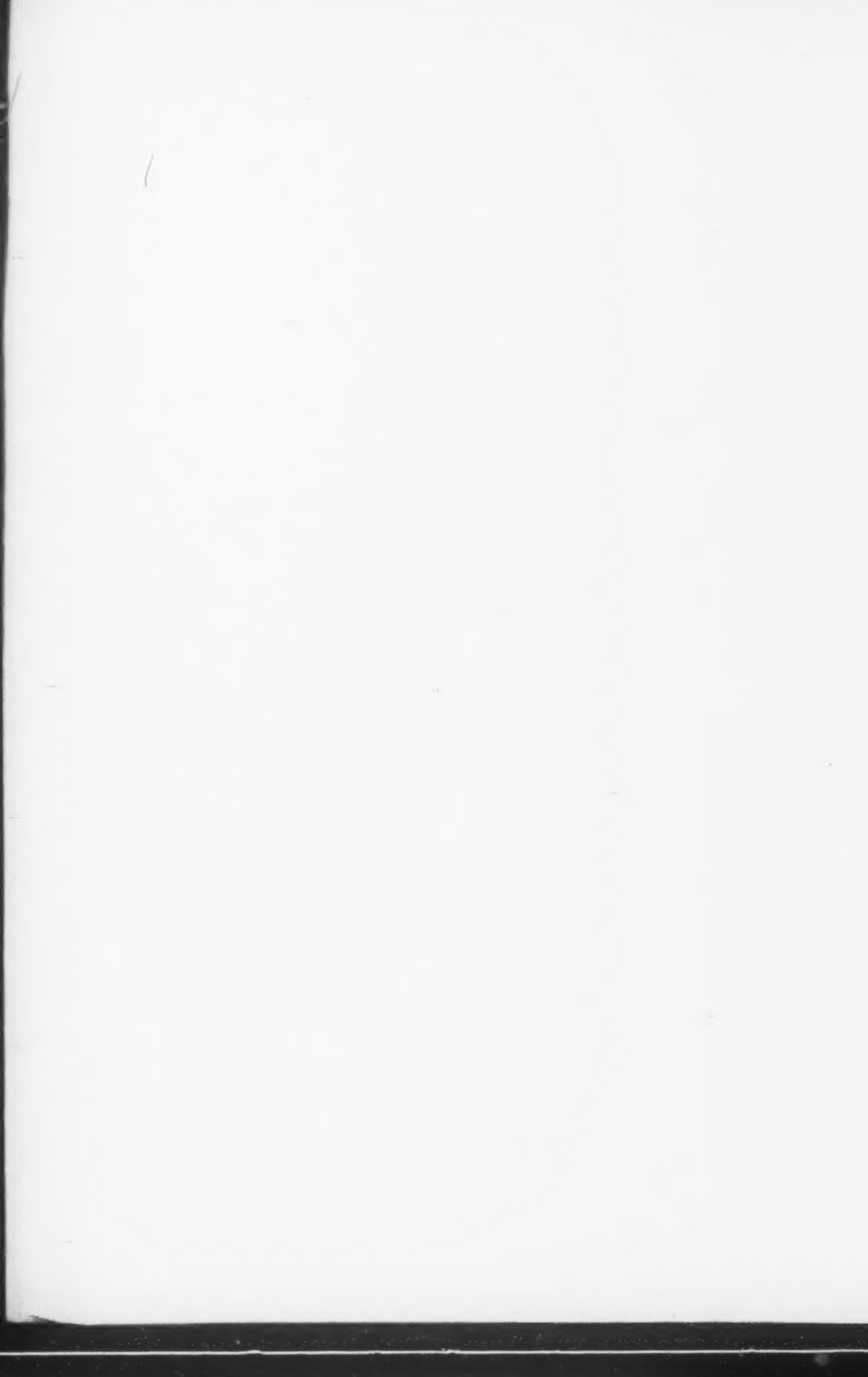


confirmation of the Petitioners' Chapter 11 Plan of Reorganization, the Bankruptcy Court determined the Petitioners' plan was not feasible and not confirmable under the standards set forth in 11 U.S.C. Section 1129(a). (Bankr. Ct. Tr. 2/26/88, P. 56, et seq.

The primary issue presented to the Bankruptcy Court at the confirmation hearing was whether the plan was feasible, a requirement pursuant to 11 U.S.C. Section 1129(a)(11) to be met before the plan could be confirmed. The Petitioners' plan (Bkpt. Ct. Doc. #182) required substantial payment to creditors and relied upon the Petitioners' ability to mine and sell substantial amounts of sand and gravel to make the required payments. Evidence produced at the confirmation hearing revealed that, although the plan was based upon the Petitioners' operating a sand and gravel mine, the Petitioners had no firm contract to sell gravel (Bankr. Ct. Tr.



2/26/88 p. 21) had no definite financing (I.d. at p. 28) had no money (I.d. at p. 29) and neither leased or owned any of the mining equipment which would be necessary to operate the proposed business essential to implementation of their plan (I.d. at pp. 30-31). The Bankruptcy Court held that the burden was on the Petitioners to prove the feasibility of the plan and the likelihood that the plan would be consummated (I.d. at p. 57). Upon the evidence before it, the Bankruptcy Court determined that the Petitioners' plan was based upon a start-up business which would need substantial infusion of capital and that the Petitioners had no funds (I.d. at pp. 57-58). The Bankruptcy Court noted that Petitioners had brought forward no testimony or evidence concerning a market for the start-up business, the needs of such a market or expectations (I.d. at p. 59). Judicial notice was taken that there were, at the time no major construction jobs in the



Denver area, no evidence that any major jobs would be forthcoming and that the market was in a slump. The Court, therefore found, that the Petitioners had failed to prove the feasibility of the plan and denied confirmation.

The infeasibility of the Petitioners' plan it should be noted, was apparent at the first scheduled hearing on confirmation set for January 19, 1988. At the January 19, 1988 hearing, Petitioners' counsel obtained a continuance due to the admitted inability to prove feasibility. Petitioners had no money to fund the proposed plan and the continuance was sought in order that the Petitioners might secure financing. (See Bankr. Ct. Tr. 1/19/89 pp. 6-9).

Upon making the determination that the Petitioners' plan was not feasible and therefore unconfirmable, the Bankruptcy Court considered the question of whether the case should be converted to a Chapter 7

liquidation proceeding. (Bankr. Ct. Tr. 2/26/88 p. 65). A Motion for conversion to Chapter 7 had previously been made by Grange in conjunction with it's Objection to confirmation of the Petitioners' plan. (Bkpt. Ct. Doc. #194). In addition, the Bankruptcy Court's Order of December 16, 1987, setting the confirmation hearing date gave notice that any Motion whether written or oral to convert the case to a case under Chapter 7 or to dismiss made at any hearing on confirmation shall be heard forthwith by the Court without further notice. (Bkpt. Ct. Doc. #184).

When faced with the question of whether the case should be converted to Chapter 7, Petitioners' counsel initially sought a continuance. A request however was denied by the Bankruptcy Court on the basis that numerous continuances had been given in the past and Petitioners' counsel had himself assured the Court at the prior hearing on January 19, 1988 that no further



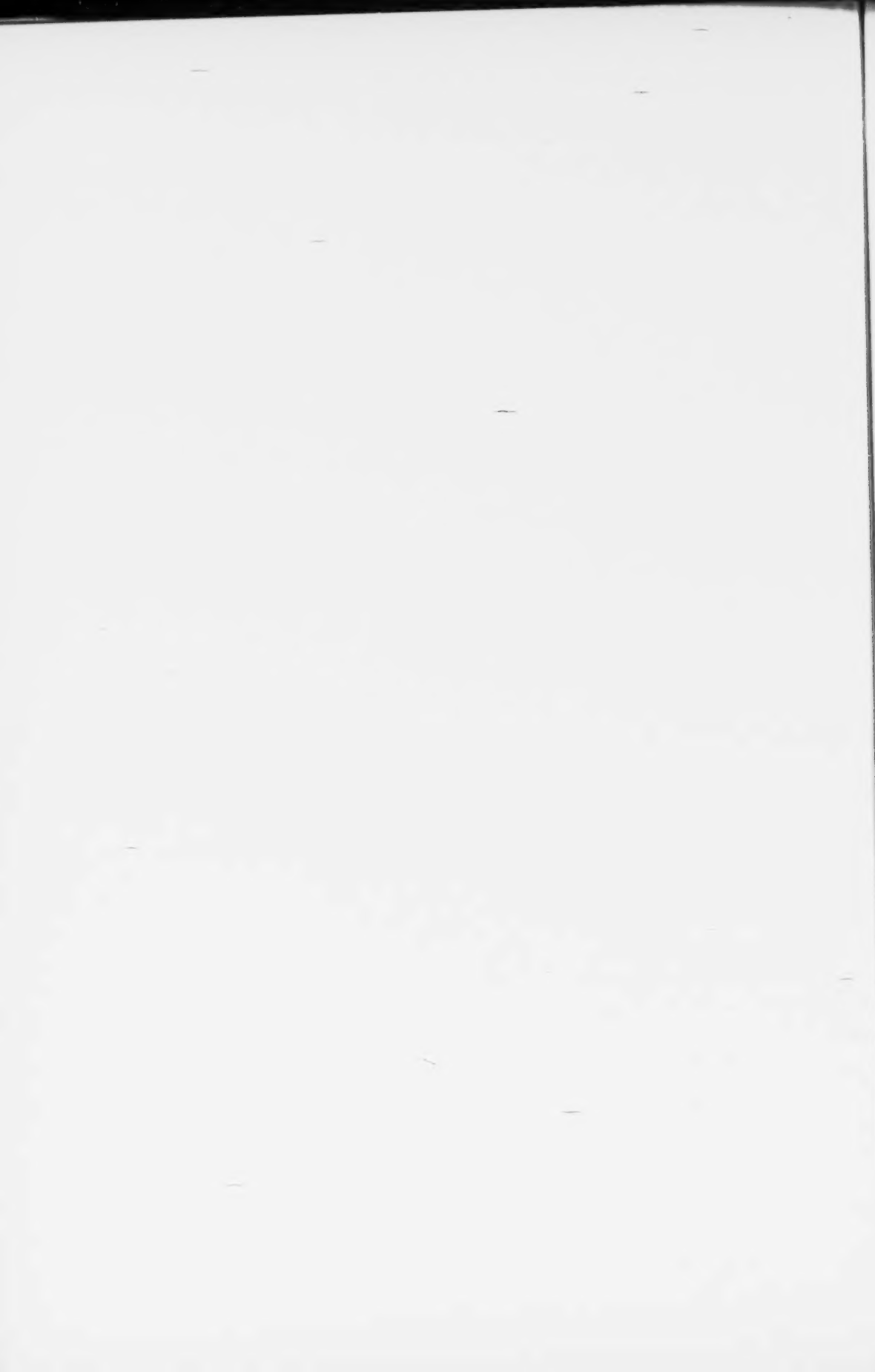
continuances would be requested. (Bankr. Ct. Tr. 1/19/88, pp. 6-7). Petitioners' counsel then requested the Bankruptcy Court to convert the case to Chapter 7. (Bankr. Ct. Tr. 2/26/88, pp. 66-67). No position on conversion was then taken by either Frontier or Grange. Based upon the request of the Petitioners' counsel, and upon considering the evidence during the confirmation hearing showing the unlikely rehabilitation of the Petitioners and the continuing deterioration of the estate, the Court ordered a conversion of the Petitioners' case to a proceeding under Chapter 7. (I.d. at p. 69).

The conversion of the Petitioners' case to Chapter 7 was proper under either 11 U.S.C. Section 1112(a) or (b). Pursuant to 11 U.S.C. Section 1112(a), a Debtor in possession of its assets in a voluntary, not previously converted case has an absolute right to convert the case to Chapter 7. Apparently, the Petitioners exercised this right through counsel.



Pursuant to 11 U.S.C. Section 1112(b) a case under Chapter 11 may be converted to Chapter 7, upon the request of a party in interest for cause including the "...continuing loss to or diminution of the estate in absence of a reasonable likelihood of rehabilitation...". Such a request for conversion was made by Grange, a party in interest holding a secured claim, at the time it filed its Objection to confirmation to the Petitioners' plan. Notwithstanding this Motion, the Bankruptcy Court, in addition, had authority under 11 U.S.C. Section 105(a) to issue the Order of conversion on its own Motion.

The District Court, in reviewing the decision of the Bankruptcy Court on Appeal held that under 11 U.S.C. Section 105(a) the Bankruptcy Court could issue necessary Orders on its own Motion. (District Court Order of 7/31/89). In addition, the District Court held that a Chapter 11 case may be converted to a



Chapter 7 case if the Bankruptcy Court found that there was a diminution of the estate and lack of a reasonable likelihood of rehabilitation pursuant to 11 U.S.C. Section 1112(b)(1). (I.d.). The District Court held that the evidence before the Bankruptcy Court supported its conclusion that the Petitioners' rehabilitation was unlikely and that the estate was losing value.

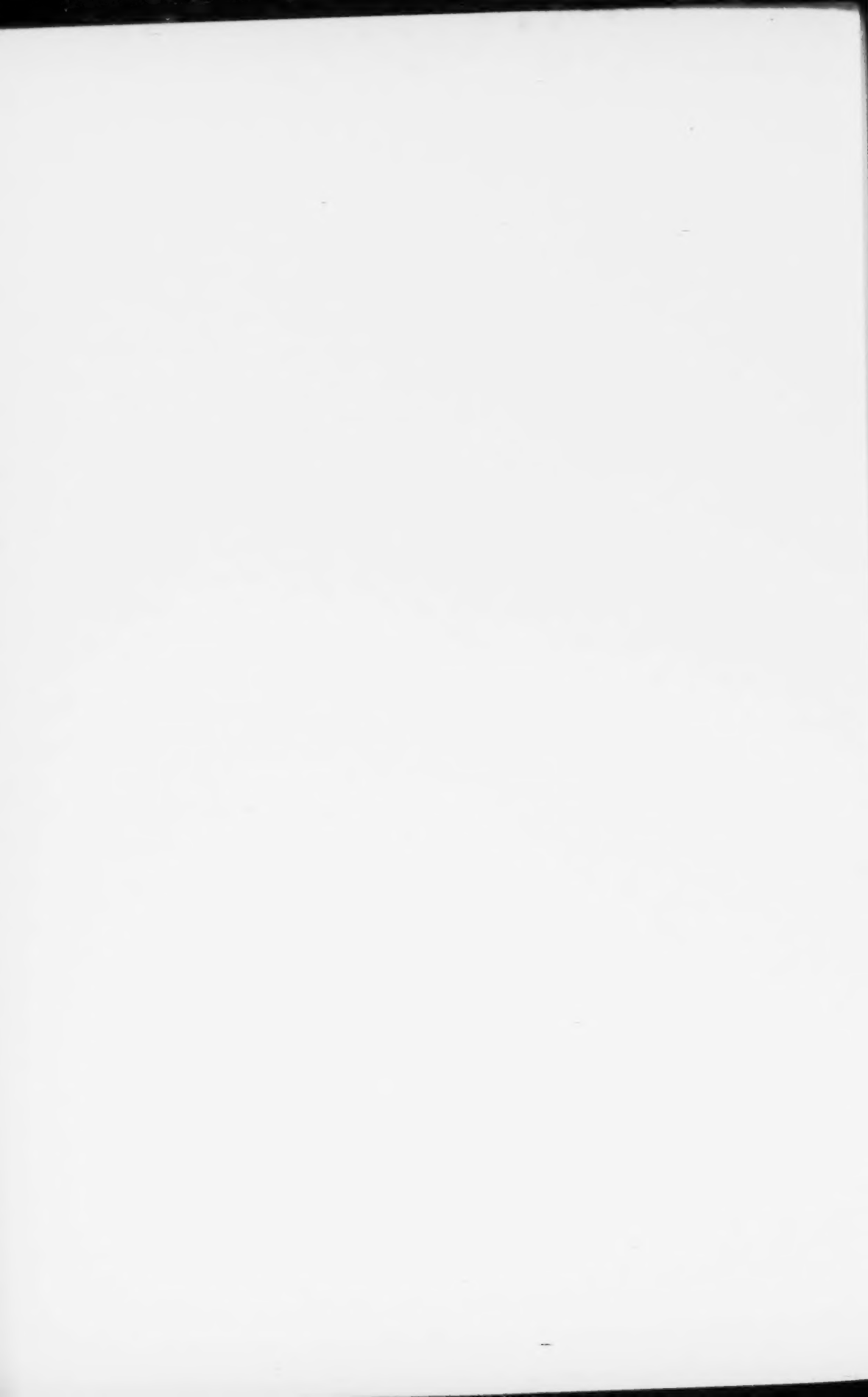
The findings of fact made by the Bankruptcy Court which prevented confirmation of the Petitioners' plan also supported the Bankruptcy Court's decision to convert the case to a case under Chapter 7. The findings of fact are not clearly erroneous and the Orders entered by the Bankruptcy Court upon such findings should be affirmed as affirmed by the United States District Court for the District of Colorado and by the United States Court of Appeals for the Tenth Circuit.

B. Sale of property by the Bankruptcy Trustee.



1. Standard of Review. The determination of whether a sale of property of the estate is permissible lies within the sound discretion of the Bankruptcy Court. In Re: J.R. McConnell, 82 B.R. 43 (Bankr. S.D. Texas 1987). Review on Appeal consists of determining whether the Bankruptcy Court abused discretion in authorizing the sale. The Bankruptcy Court's findings of fact are not to be set aside unless clearly erroneous and due regard is to be given to the Trial Court's opportunity to assess the credibility of the witnesses. Bankruptcy Rule 8013; In Re: Herd, 840 F 2d 757, 579 (10th Cir. 1988). Conclusions of law may be renewed de novo.

2. Discussion. In its review on appeal, the District Court below had before it a transcript of the testimony of Henry Braly and Will James given before the Bankruptcy Court during the hearing on the Trustee's Application to sell property of the bankruptcy estate. The transcript was



designated by the Petitioners as the record on Appeal and supports the decision of the Bankruptcy Court.

. The record sets forth the following facts: (1) Petitioners owed Grange at least \$600,000.00, Bankr. Ct. Tr. 112/2/88, p. 20; (2) Petitioners owed Frontier at least \$185,000.00; I.d. at p. 4; (3) The Chapter 7 Trustee was unsuccessful in attempting to sell the property to other buyers, I.d. at p. 5; and (4) The fair market value of the property proposed to be sold was not greater than \$610,000.00, I.d. at pp. 44, 49 to 50. The sale proposed an exchange of the property to Frontier in full satisfaction of Grange's secured claim and Frontier's administrative priority claim. In essence, therefore, property worth at the most \$610,000.00 was used to satisfy, in full, claims totalling at least \$845,000.00, \$600,000.00 of which was secured by the property conveyed. The amounts of the debt against the property did not include the



amount of interest which had accrued during the several years time the Petitioners were in Chapter 11. The Bankruptcy Court determined that the proposed sale was in the best interest of the estate and, in its discretion, approved the sale. Bankr. Ct. Tr. 12/9/88, pp. 8-9. In fact the Bankruptcy Court determined that the sale was actually worth \$1,150,000.00. The Bankruptcy Court's approval of a transaction whereby property was transferred to a party in full satisfaction of such party's administrative claim as well as full satisfaction of the secured and unsecured claims of the creditor having an interest in such property was not an abuse of discretion and should be affirmed as it was by the United States Court of Appeal for the Tenth Circuit.

C. Appeal of Order Approving Sale is Moot.

1. Preface. It is the position of the Trustee that the question of whether

the Bankruptcy Court abused its discretion in approving his Application to sell property of the estate is moot and that review by this Court is not necessary. The issue was made moot by consummation of the sale of the property in January, 1989. No stay of the Order authorizing the sale was obtained pending Appeal nor is any stay alleged to have been obtained. Pursuant to 11 U.S.C. Section 363(m), the reversal or modification of the Bankruptcy Court's Order on Appeal does not effect the validity of the sale to a good faith purchaser, regardless of such purchaser's awareness of the Appeal, unless the Order authorizing the sale was stayed. Upon the failure of the Petitioners to obtain a stay, the Appeal became moot and subject to dismissal. In Re: Vetter Corporation, Corp., 724 F 2d 52, 55-56 (7th Cir. 1983) In Re: Bel Air Associates, Ltd., 706 F 2d 301, 304-305 (10th Cir. 1983) (Interpreting former Federal F.E.D. Rule. Bankr. P. 805).



2. Standard of Review. The issue of the mootness on Appeal of review of the Bankruptcy Court's Order authorizing the sale of the Chapter 7 estate is a question of law. Conclusions of law may be reviewed de novo.

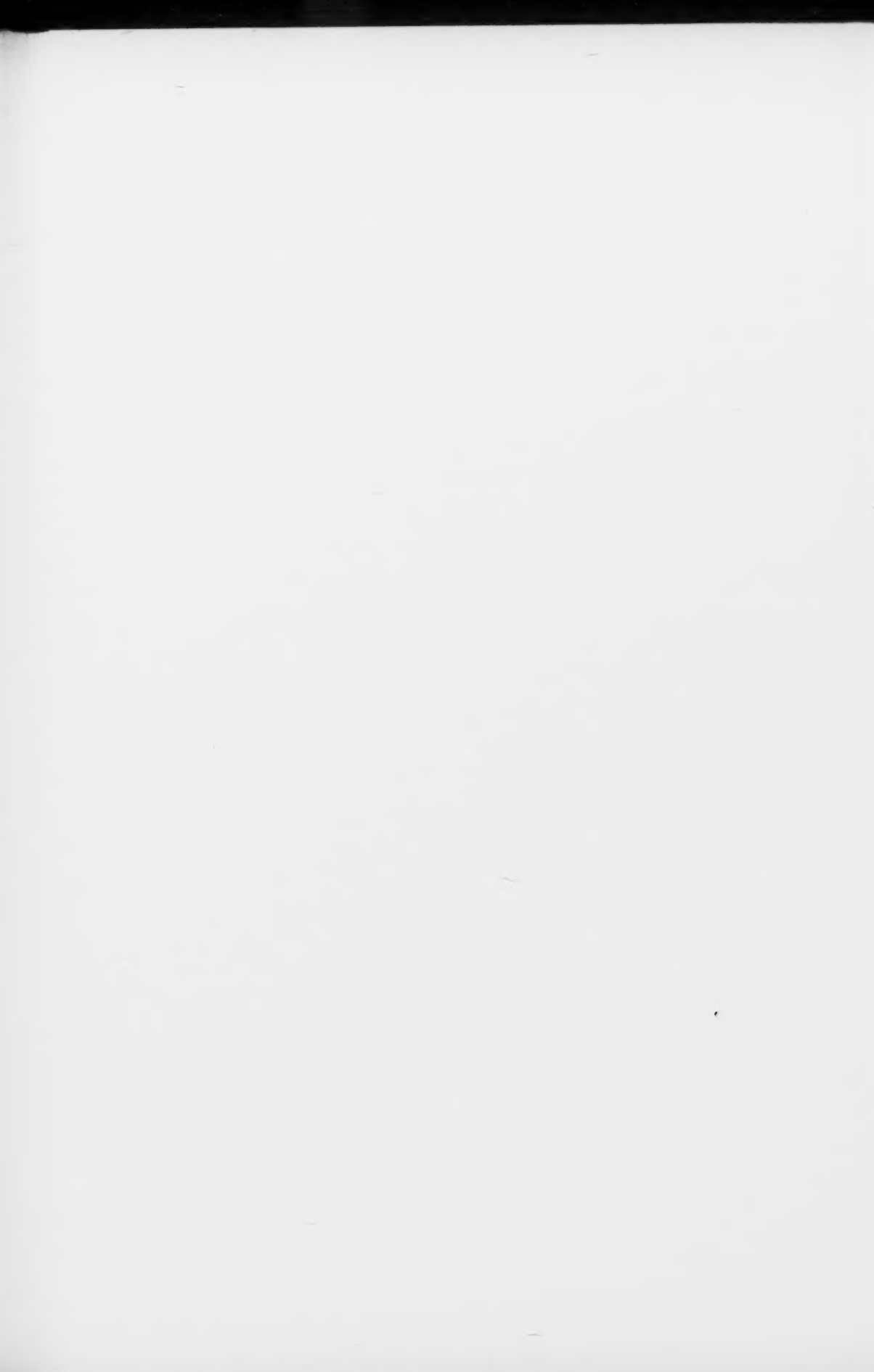
3. Discussion. The District Court below and the United States Appellate Court for the Tenth Circuit in considering Petitioners' Appeal of the Bankruptcy Court's Order authorizing the sale, determined that the Appeal was rendered moot by 11 U.S.C. Section 363(m) upon Petitioners' failure to obtain a stay of the sale pending Appeal.

On December 14, 1988, the Order of the Bankruptcy Court was entered granting the Trustee's Application to sell certain real property to Frontier. On Petitioners' Motion, the Trustee's Application was reconsidered on January 13, 1989. Petitioners' request to reconsider and vacate the Order was denied.



Thereafter, the sale was consummated by execution and delivery of a Trustee's Deed dated January 27, 1989; the Deed was recorded on January 30, 1989 with the Clerk and Recorder of Boulder County, Colorado. No stay of the sale was obtained by the Petitioners pending Appeal.

Pursuant to the provisions of 11 U.S.C. Section 363(m), the sale is final and not subject to modification or reversal upon Appeal. The Petitioners' contentions that the sale and Frontier's purchase of the property was in bad faith and therefore not subject to the stay requirement of 11 U.S.C. Section 363(m), was dismissed by the District Court below on the basis that it could not review issues neither raised in the Bankruptcy Court nor designated for Appeal. The United States Appellate Court for the Tenth Circuit affirmed and this Court, in turn should not consider arguments neither raised or litigated in the Trial Court below.



The sale of the property renders review of the issues involving the propriety of the Bankruptcy Court's decision to permit such sale moot. The Petitioners failed to obtain a stay of the sale and, accordingly the Appeal must be dismissed.

D. Petitioners' Remaining Issues and Contentions are not Properly before the Court on Review.

The Petitioners in their Petition for Writ of Certiorari make numerous allegations concerning events taking place during the bankruptcy proceedings which were not raised or argued in the Court below. Including among these allegations are discussions that the Petitioners had with counsel and other persons not found within the record of Court. These discussions, now being heard for the first time, should not be considered by this Court in its review of the decisions properly before it.

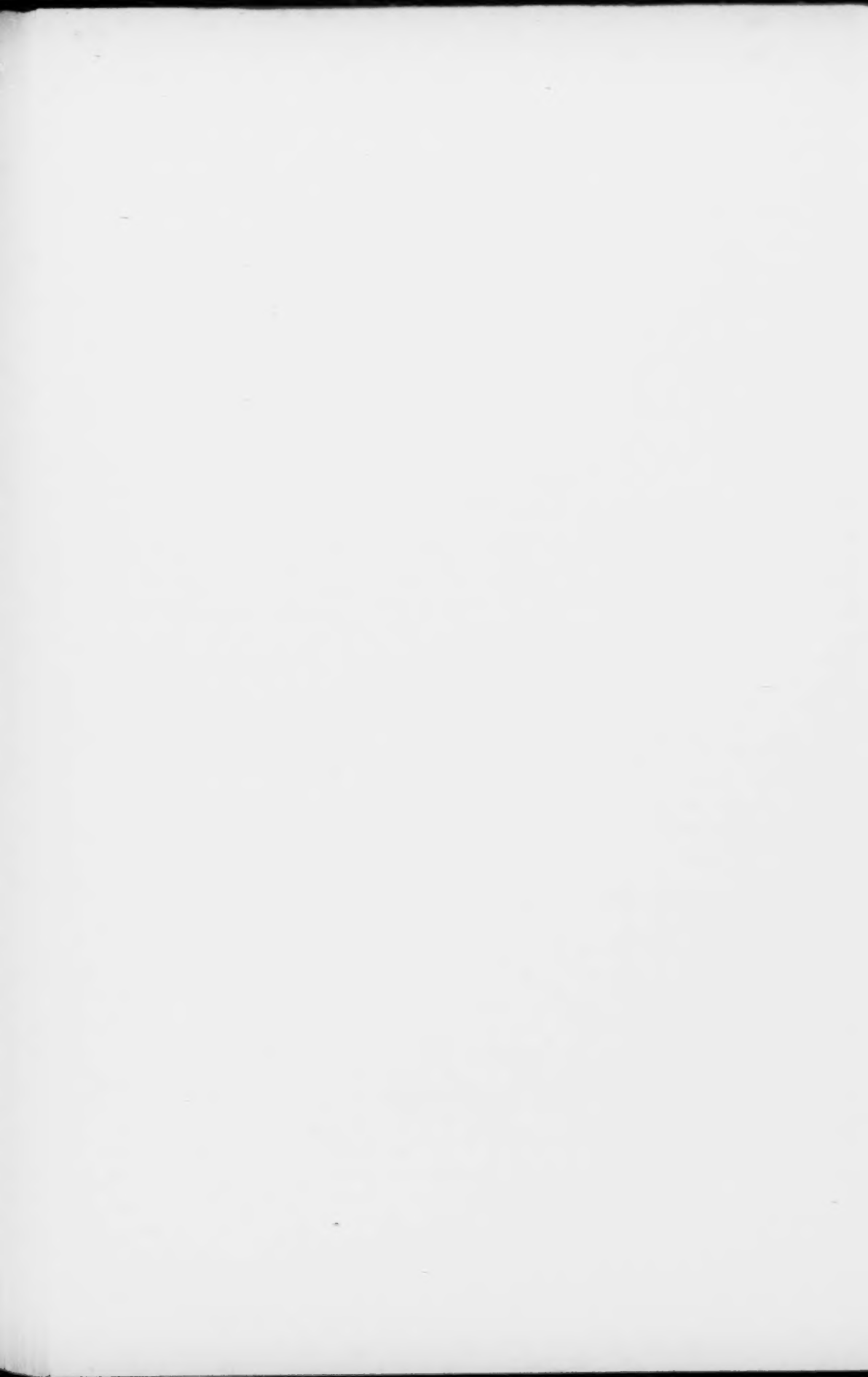
Properly before this Court on Appeal is the decision of the United States



District Court for the District of Colorado entered on July 31, 1989.

Other proceedings have been addressed earlier in this response to the Petitioners' Writ of Certiorari as to the reasons they are not properly before this Court.

Similarly, the settlement agreement (Bkpt. Ct. Doc. #66) is not properly before this Court on review because it was not introduced or accepted as evidence in any of the proceedings now before the Court and, therefore, is not part of the record. The Petitioners' allegations of bias on the part of Bankruptcy Court Judge Charles E. Matheson are without merit. Upon review of this issue by the District Court below, which allegations were founded upon hand written notes of the Bankruptcy Judge submitted by Petitioners outside of the record of Appeal no bias or prejudice was found. On the contrary, the District Court found that the notes reflected a



careful consideration of the evidence by Judge Charles E. Matheson.

It is the position of the Trustee as it was in the Court below that the Bankruptcy Court and the District Court and the Appellate court for the Tenth Circuit have made every attempt to accommodate the Petitioners and have given them repeated opportunities for hearings and chances to present evidence in support of their cases and causes. The Courts have been incredibly patient with the Petitioners and have reached careful, considered decisions before them. It is submitted, respectfully that the time has come if not long over due for these matters to be put to rest.

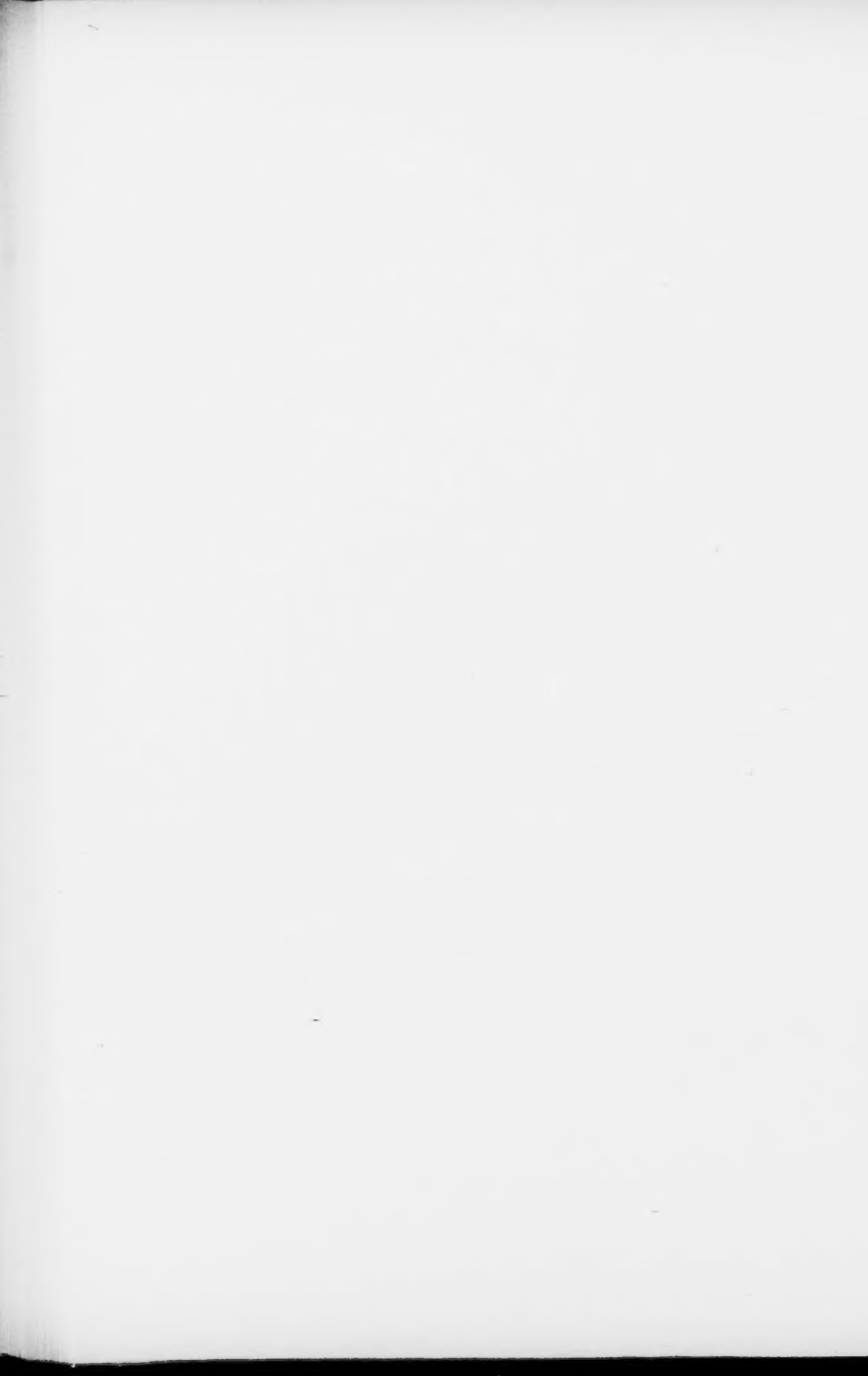
E. United States Supreme Court Considerations Governing Review on Writ of Certiorari.

United States Supreme Court Rule 10 indicates the considerations governing a review on Writ of Certiorari. Rule 10 indicates that reasons for granting a



Petition for Writ of Certiorari include conflicting decisions between the various Circuit Courts of Appeal related to a same matter; a decision by a United States Court of Appeals which conflicts with a State Court of Last Resort; decisions by State Courts of Last Resort deciding federal questions in conflict with decisions of another State Court of Last Resort or of the United States Court of Appeal; decisions by a State Court or a United States Court of Appeal deciding a question of federal law which has not been but should be, settled by the United States Supreme Court.

Rule 10 also indicates that a Petition for Writ of Certiorari might be granted if a United States Court of Appeals has so far departed from the excepted and usual course of judicial proceedings, or sanctioned such a departure by a lower Court, so as to call for an exercise of this Court's power of supervision. The Petition for Writ of Certiorari could only be granted



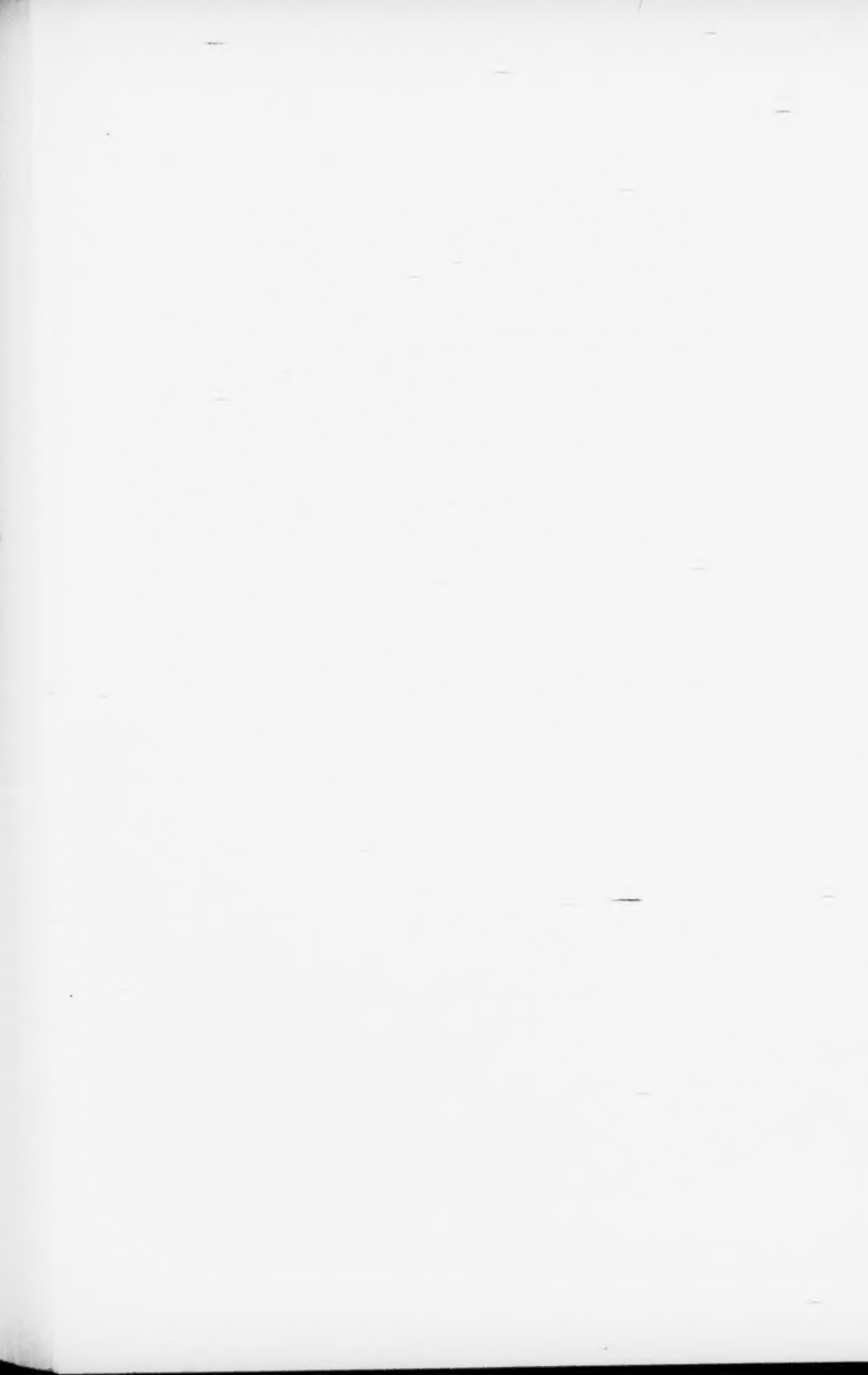
related to this last policy consideration. The United States Court of Appeals and the lower Courts in this case however, have not departed from the accepted and usual course of judicial proceedings and exercise of this Court's supervision over the lower Courts is not necessary related to this matter.



VII. CONCLUSION

This Court should deny the Petition for Writ of Certiorari which would allow the decision of the United States District Court for the District of Colorado entered on July 31, 1989 to stand.

The determination of the Bankruptcy Court that the Petitioners' plan of reorganization was unfeasible and the subsequent conversion of their case to Chapter 7 was based upon findings of fact which were not clearly erroneous. The decision of the Bankruptcy Court to approve the Trustee's Application to sell property of the estate was not an abuse of discretion and served to benefit the Petitioners' estate. The reversal or modification of the Order authorizing the sale was not stayed upon Appeal and would not effect the consummation of the sale. Consequently, the Appeal of the Order authorizing the sale is moot. All of the other issues raised by the Petitioners are either not properly before



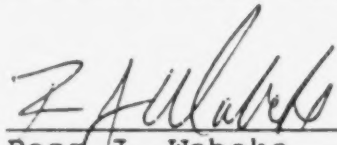
the Court, or are without merit. or are total misstatements.

The decision of the Tenth Circuit Court of Appeals and the District Court affirmed the Orders of the Bankruptcy Court should be allowed to stand.

Dated this 20th day of September, 1991.

Respectfully submitted,

DeGood, Ball, Easley, Wabeke & Brummet



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Bankruptcy Trustee



VIII. CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of September, 1991 a true and correct copy of the attached Response of Ross J. Wabeke to Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit was mailed United States postage prepaid to the following:

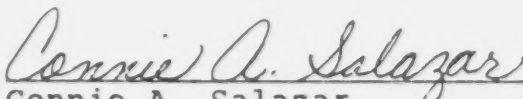
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1845 Sherman Street
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Connie A. Salazar



STATE OF COLORADO)ss
COUNTY OF LARIMER)

The foregoing Certificate of Service
was acknowledged before me this 20th day of
September, 1991 by Connie A. Salazar.

Witness my hand and official seal.
My commission expires: 03-07-92

Carolyn L. Darrell
Notary Public